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1 UNITED STATES DISTRICT COURT
2 DISTRICT OF MINNESOTA
3 THIRD DIVISION

4 Charles Everett Cook, et al.,

5 Plaintiffs,

6 v.

7 City of Minneapolis, et al.,

8 Defendants.

9 DEPOSITION OF

10 MARK A. JOHNSON

11 Taken March 29, 2007
12 Commencing at 1:05 p.m.

13

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1 Deposition of MARK A. JOHNSON, taken on
2 March 29, 2007, commencing at approximately 1:05
3 p.m., at the law offices of the MINNEAPOLIS CITY
4 ATTORNEY, 300 Lincoln Centre, 333 South Seventh
5 Street, Minneapolis, Minnesota, before Jane C.
6 Norman, Registered Professional Reporter and Notary
7 Public of and for the State of Minnesota.

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APPEARANCES

14 ON BEHALF OF PLAINTIFFS:

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23 NOTE: The original transcript will be delivered to
24 Albert Turner Goins, Sr., Esq., pursuant to the
 applicable Rules of Civil Procedure.

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1	I N D E X	
2	WITNESS: MARK A. JOHNSON	PAGE
3	EXAMINATION BY MR. GOINS	4
4		
5	OBJECTIONS: 6, 27, 28, 38, 39, 47, 48, 49, 53, 61,	
6	63	
7		
8	REQUEST FOR PRODUCTION: 58	
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11	EXHIBITS MARKED AND REFERRED TO: (NONE)	
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1 MARK A. JOHNSON,
2 having been first duly sworn, testifies as follows:

3 EXAMINATION

4 BY MR. GOINS:

5 Q Give me your full name, please, Officer.

6 A Mark Armin Johnson.

7 Q Could you spell that, please?

8 A M-A-R-K, A-R-M-I-N, J-O-H-N-S-O-N.

9 Q Where are you currently employed?

10 A City of Minneapolis Police Department.

11 Q How long have you been employed there?

12 A 12 years.

13 Q In what role?

14 A Police officer.

15 Q Okay. Tell me a little bit about your
16 educational background.

17 A I obviously graduated from high school,
18 have a two-year degree from Alexandria Technical
19 College.

20 Q What's that degree in?

21 A It's an associate's applied science for
22 law enforcement.

23 Q Is that where you got your so-called
24 Skills training as they call it?

25 A Yes.

5

1 Q And tell me, are you POST board certified?

2 A Yes.

3 Q Have you talked to your other fellow
4 officers about the depositions that have been
5 conducted in this lawsuit?

6 A No.

7 Q Do you know the other officers who were
8 involved in this lawsuit?

9 A Yes.

10 Q Okay. Let's go through them. Do you know
11 Officer -- Sergeant -- Sergeant Don Smallski (ph)?

12 A Yes.

13 Q How do you know Sergeant Smallski?

14 A He was my sergeant.

15 Q When?

16 A Well, actually for the past probably five,
17 six years.

18 Q So he's still your sergeant?

19 A Yes.

20 Q Again, you didn't tell me what precinct
21 you're in.

22 A Third precinct.

23 Q Have you had your deposition taken before,
24 Officer?

25 A Yes.

6

1 Q How many times?

2 A Once.

3 Q What was the context?

4 A It was a civil suit for a death case.

5 Q Was I involved in that case?

6 A No.

7 Q Who was the plaintiff's attorney, if you
8 recall?

9 A Can't remember.

10 Q Okay. Who died?

11 A Christopher Burns.

12 Q Christopher Burns was the decedent?

13 A Yes.

14 Q And were you involved in applying deadly
15 force?

16 MS. NELSON: I'm gonna object to
17 relevance.

18 MR. GOINS: Yeah, fine.

19 Q Go ahead. Were you involved in applying
20 deadly force?

21 MS. NELSON: You can go ahead and answer.

22 A Yes.

23 Q Tell me about it.

24 A Well --

25 MS. NELSON: Same objection. Go ahead and

7

1 answer.

2 A It was -- actually we didn't apply deadly
3 force. My partner applied a lateral vascular neck
4 restraint and Mr. Burns died.

5 Q Was he the individual where you were
6 called to the scene of a domestic assault and when
7 you got there -- alleged domestic assault and when
8 you got to the location officers ended up in a
9 scuffle with this individual named Christopher
10 Burns and he ended up dying?

11 A Yes.

12 Q When did that happen?

13 A Oh, I believe it's been three years ago
14 now.

15 Q What happened with that lawsuit?

16 A It's still pending.

17 Q And you've testified and given a
18 deposition in that lawsuit?

19 A I've given a deposition, yes.

20 Q Now again -- you said your partner was who
21 again?

22 A Officer Luke Peterson.

23 Q Where is Luke Peterson right now?

24 A I believe he's in the gang unit. The
25 metro gang unit.

8

1 Q Were you guys split up after that
2 incident?

3 A No.

4 Q All right. Let's go through these other
5 -- he was -- I don't recall that Officer Peterson
6 was involved in this search that occurred on
7 January 14th of -- 2005, Tracey?

8 MS. NELSON: I think it was 2005.

9 Q Was Officer Peterson involved in that
10 search January 14, 2005 at the Cook residence?

11 A I don't believe so.

12 Q All right. How about Officer -- is it
13 Katie Blackwell?

14 A Yes.

15 Q Do you know Officer Blackwell?

16 A She was in my unit at that time.

17 Q What unit was that?

18 A It was the third precinct directed patrol.

19 Q What's that mean, third precinct directed
20 patrol?

21 A It used to be a CRT, C-R-T, team, used to
22 be a Community Response Team, but they changed it
23 to directed patrol. We basically did street level

24 crimes and hit hot spots and stuff like that.

25 Q Okay. We never really finished with your

9

1 background. Let me just go back for completeness
2 sake. Education here in Minnesota, right?

3 A Yes.

4 Q Where did you go to high school?

5 A Winona Senior High.

6 Q So you grew up in Winona?

7 A Yes.

8 Q Play any sports?

9 A Hockey.

10 Q Anything else?

11 A I played baseball, but not, you know, for
12 the high school or anything.

13 Q Defenseman in hockey?

14 A Forward.

15 Q And then did you play in any sports in
16 college?

17 A Just played rec league hockey.

18 Q Now, did you have any additional training
19 after your degree from Alexandria?

20 A Yes.

21 Q Okay. Now for a while you were on the CRT
22 team; were you on the CRT team January 14th of

23 2005?

24 A Yes, the directed patrol team, yes.

25 Q So directed patrol is what the CRT team

10

1 used to be?

2 A Yes.

3 Q And Sergeant Smallski's been in charge of

4 that for how long, if you know?

5 A He was in charge of it for about two and a

6 half years.

7 Q Who is your sergeant now?

8 A Now I'm back on the street.

9 Q Where on the street?

10 A Third precinct middle watch.

11 Q And what are the hours for middle watch?

12 A Four p.m. until two a.m.

13 Q Okay. Let's keep going through the

14 officers. Officer Geoffrey Toscano.

15 G-E-O-F-F-R-E-Y T-O-S-C-A-N-O. Do you know Officer

16 Toscano?

17 A He's my partner.

18 Q Current partner, right?

19 A Yes.

20 Q Was he involved in a lawsuit with the --

21 when Mr. Burns died?

22 A No, I don't believe so.

23 Q He's been involved in other lawsuits
24 though, hasn't he?
25 A I don't know.

11

1 Q You don't know?
2 A Well, I know he's got one, but I don't
3 know what he's got going with -- with them. I
4 don't keep up on lawsuits.
5 Q Which one does he have, do you know?
6 A He has told me he was recently in a
7 deposition, but I don't know for what case.
8 Q This case or a different case?
9 A I believe this case.
10 Q Okay. Have you talked about his
11 deposition testimony?
12 A No.
13 Q Have you talked about this incident at the
14 Cook family home?
15 A No.
16 Q Were you part of the ERU team on that day,
17 on January 14, 2005?
18 A No.
19 Q Who was in the ERU team?
20 A I can't remember.
21 Q Can't remember anybody?

22 A Well, I know Officer Toscano was, like
23 Sergeant Kroll (ph) was the sergeant.
24 Q You mean Lieutenant Kroll?
25 A He's Lieutenant Kroll now. And I don't

12

1 remember who else was the entry team.
2 Q How about Bevan Blauert, B-L-A-U-E-R-T; do
3 you know Bevan, B-E-V-A-N, Blauert?
4 A Not personally, no.
5 Q Was he on the CRT team or the entry team?
6 A I believe the entry team.
7 Q What's the difference?
8 A He's -- those guys are -- ERU now are SWAT
9 team and they do entries where the CRT team or
10 directed patrol or any other units that do warrants
11 will call the ERU, SWAT team to come make entry
12 into the house and secure it and then we go in and
13 search it and go from there.
14 Q What were you told, if anything -- we'll
15 go back to the officers in a minute, like Officer
16 Christopher House. Let's just finish up -- let's
17 be semi-systematic. Officer Christopher House, do
18 you know him?
19 A He was on the unit with me.
20 Q Okay. What unit?
21 A Directed patrol.

22 Q And you said Sergeant Kroll, now
23 Lieutenant Kroll, he was the head of the ERU entry
24 team?
25 A Yes.

13

1 Q Do you know him pretty well?
2 A Yes.
3 Q Did you work with him prior to January 14,
4 2005?
5 A I believe he was my sergeant for
6 approximately two years.
7 Q Okay. So had you gone on a lot of entries
8 with him?
9 A No.
10 Q Okay. How about Officer Kristi Nelson, do
11 you know her?
12 A She was on the directed patrol unit with
13 me.
14 Q Do you know her pretty well?
15 A Yes.
16 Q Socialize with her?
17 A No.
18 Q How about Officer William Willner,
19 W-I-L-L-N-E-R?
20 A He was also on the unit with me.

21 Q Know him pretty well?
22 A Yes.
23 Q Socialize with him?
24 A Yes.
25 Q Been to his house?

14

1 A Yes.
2 Q Would you say you're friends with him?
3 A I would say so.
4 Q How long have you known Officer Willner?
5 A Oh, probably about five years.
6 Q Officer Westlund, do you know him?
7 A He was also on my unit.
8 Q Friends with him?
9 A At work.
10 Q At work friends then?
11 A Yeah.
12 Q Been to his home?
13 A No.
14 Q Any other officers you can recall that
15 were involved in this case that -- like Officer --
16 now I've got Officer Jason King, he's an officer.
17 Do you know him?
18 A Yes.
19 Q Friends with him?
20 A At work, yes.

21 Q How about Officer Roger Smith, do you know
22 him?
23 A Not personally.
24 Q He's a little bit older officer, huh?
25 A Yes.

15

1 Q How about Officer John Petron?
2 A He was on our unit at the time.
3 Q Friends with him?
4 A No.
5 Q Some reason you're not friends with him?
6 A I didn't know him very well. He came from
7 a different precinct to our unit and he wasn't on
8 our unit very long.
9 Q Officer -- is it Timothy Hand?
10 MS. NELSON: Hanks.
11 MR. GOINS: We need to get the caption
12 corrected probably. Otherwise he floats around
13 there in limbo.
14 Q Do you know Officer Timothy Hanks?
15 A Yes.
16 Q Friends with him?
17 A I talk to him at work, yeah.
18 Q So if you saw any of these officers
19 committing misconduct would you report it?

20 A Yes.

21 Q Why?

22 A Because it's the right thing to do.

23 Q Have you ever done that in the past?

24 A Reported misconduct?

25 Q Yeah. About another officer.

16

1 A No, I don't believe I've ever seen

2 misconduct.

3 Q How long have you been a Minneapolis

4 officer; 12 years?

5 A 12 years.

6 Q And the entire time you've been on the MPD

7 you've never seen any misconduct by a fellow

8 officer?

9 A Yes.

10 Q Which? Yes, you have or you haven't?

11 A No, I haven't.

12 Q Okay. Have you ever seen any video tapes

13 of any officers committing misconduct?

14 A On like what type of video tapes?

15 Q Anything, news reports --

16 A Yes.

17 Q You've seen the Minneapolis officers

18 commit misconduct?

19 A Yes.

20 Q You've seen the video tape of the officer
21 who is alleged to have committed misconduct when he
22 slapped a person with his hands behind his back?

23 A No.

24 Q You never saw that?

25 A No.

17

1 Q What have you seen on video tapes or news
2 reports of Minneapolis police officers committing
3 misconduct?

4 A I don't know if I've seen Minneapolis
5 officers; I've seen other officers. I think years
6 back I've seen -- well, probably, what, 15 years
7 ago now there's an officer that they had on video
8 tape punching a juvenile. I can't remember what
9 that was for. I think that was before I was on the
10 department.

11 Q And would you have considered that to be
12 misconduct?

13 A I didn't know the whole facts of the case.

14 Q Okay. So you'd have to know the whole
15 facts of the case before you'd report misconduct,
16 is that correct?

17 A Yes.

18 Q Now, in this situation January 14, 2005,

19 you know the residence that I'm referring to, the
20 Cook family home?

21 A Yes.

22 Q What address was that?

23 A I can't recall.

24 Q Was it 3845 Second Avenue South?

25 A That's probably correct.

18

1 Q Do you recall making an entry at that
2 residence?

3 A Yes.

4 Q Do you recall when you did it?

5 A I don't remember the time, but I know it
6 was dark out.

7 Q Do you think you did it after eight p.m.
8 at night, 20 hundred hours?

9 A That could be possible.

10 Q Did you have a briefing -- first of all,
11 do you know if you had a search warrant -- your
12 team had a search warrant when you made that entry?

13 A Yes, we did.

14 Q Who did the search warrant, which officer?

15 A I believe Officer Blackwell did.

16 Q Officer Katie Blackwell?

17 A Yes.

18 Q Who was she doing the search warrant on?

19 A I can't remember his name, but we were
20 working some robberies that were in the area, I
21 believe we arrested or retained an individual and
22 he gave us the info about a possible robbery
23 suspect and he lived at that address.

24 Q So the warrant was a person warrant as you
25 understood it?

19

1 A Yes.

2 Q So if the warrant was a person warrant did
3 you have a picture of the person you were looking
4 for before you went into that house?

5 A I believe we did, yes.

6 Q What was the picture -- give me the
7 description.

8 A I believe it was a younger black male, I
9 can't remember his height.

10 Q Anything else?

11 A Also I remember -- no, I can't really
12 remember much of it.

13 Q So you can't remember anything else about
14 who you were looking for?

15 A No.

16 Q What was the age of the quote, unquote
17 "younger black male?"

18 A I think it was between 18 and 21.

19 Q Okay. Was this a knock-and-announce or a
20 no-knock warrant?

21 A I don't know.

22 Q Do you know the difference?

23 A Yes.

24 Q What's the difference?

25 A A no-knock you can just -- basically the

20

1 enter team can kick in the door and obviously you
2 have to yell, you know, your presence, the police.
3 A knock warrant from what I know is you have to
4 knock on the door, I think you have to give them
5 ample time to answer the door before you can go in.

6 Q Well, which was this?

7 A I don't know.

8 Q What did you do in this case?

9 A I waited for the entry team to go in and
10 then after they secured it I went inside the
11 residence.

12 Q So you don't know the authority under
13 which you were entering then, is that correct?

14 A I don't know if it was a knock or a
15 no-knock warrant.

16 Q Okay. Did you have a briefing before you
17 went on this warrant?

18 A Yes.

19 Q Who held the briefing?

20 A I believe, I think it was Officer

21 Blackwell. I can't really recall.

22 Q Where was the briefing held?

23 A The third precinct directed patrol office.

24 Q Which is where?

25 A It's on the second floor at the third

21

1 precinct, 3000 Minnehaha.

2 Q Do you know when the briefing was held?

3 A It would be just, you know, before we went
4 and executed the warrant.

5 Q How much before?

6 A I would say it was probably about 20
7 minutes.

8 Q How did you get there to the location?

9 A In a marked squad car.

10 Q And what were your instructions; what were
11 you supposed to do, if anything?

12 A I secured the outside perimeter and waited
13 for the entry team to declare that it was code four
14 inside.

15 Q Do you know of any reason why you're the
16 reporting officer on this case?

17 A Because what we would do is if we'd arrest
18 somebody usually the person that took the
19 individual to jail, got all his -- did all the
20 paperwork for him, would come back to the station,
21 enter all the info and so when you enter the info
22 you're the reporting officer; that's how the
23 computer puts it in.

24 Q So your number is 003459, is that correct?

25 A Yes.

22

1 Q And that's your employee number, your
2 badge number, which?

3 A Both.

4 Q So would it be fair to say you entered all
5 the information regarding the allegation of the
6 offense of obstructing legal process against the
7 arrested individuals at this address?

8 A Yes.

9 Q Who was the arrested person or individual
10 at this address?

11 A I can't remember his first name. His last
12 name was Cook.

13 Q Can you describe him?

14 A Yes, I believe he was probably about 6
15 foot, oh, about 230 pounds, black male, I can't
16 remember his age, but I would say he was probably

17 my age.

18 Q Which is what?

19 A 35.

20 Q Okay. Would you say he could have been as
21 old as 40 years old?

22 A Yes.

23 Q Why was he arrested?

24 A The entry team said he was obstructing
25 when they made entry.

23

1 Q Who told you that from the entry team?

2 A Sergeant Bob Kroll and other members of
3 the entry team.

4 Q What specifically did Sergeant Kroll, now
5 Lieutenant Kroll, tell you at the time?

6 A That he wanted Mr. Cook arrested for
7 obstructing.

8 Q Did he tell you what he did?

9 A No.

10 Q Did you see any conduct by Mr. Cook
11 personally, Officer Johnson, that indicated that he
12 had obstructed legal process?

13 A Yes.

14 Q What did you see?

15 A After they code four the scene I went

16 inside, Mr. Cook was yelling and screaming, trying
17 to get up off the floor, yelling and screaming and
18 telling people to shoot him now and all kinds of
19 other remarks.

20 Q Which Mr. Cook was saying that?

21 A The individual that I took to jail.

22 Q So this would have been Timothy Cook, the
23 35- to 40-year-old, not a man, say, in his 60s or
24 70s?

25 A He was also talking.

24

1 Q I'm asking you though the person that you
2 arrested for obstructing legal process.

3 A Well, that's what I saw.

4 Q You saw him yelling?

5 A I heard him yelling and screaming and
6 trying to get off the floor and basically taking
7 our -- there was a bunch of people in there so he
8 was basically taking our attention away from the
9 other individuals inside the house so we had to
10 watch him.

11 Q He was handcuffed when you saw him, wasn't
12 he?

13 A Yes.

14 Q When you say he was trying to get up off
15 the floor what specifically was he doing?

16 A Trying to sit up.
17 Q Is it wrong for him to try to sit up?
18 A Excuse me?
19 Q Was it wrong for him to try to sit up?
20 A Yes.
21 Q Why?
22 A Because they were -- we were still looking
23 around, still making sure the scene is secure.
24 Q And somebody told him not to sit up?
25 A Yes.

25

1 Q Who told him that?
2 A Numerous officers.
3 Q Did you tell him that?
4 A No.
5 Q Who were the numerous officers who told
6 Mr. Cook, don't sit up?
7 A I don't know.
8 Q You're sure that that happened?
9 A Yes.
10 Q So you're saying because he tried to sit
11 up handcuffed -- was he handcuffed front or back?
12 A I believe in the back.
13 Q So he was handcuffed behind his back and
14 because he tried to sit up that constituted

15 obstructing legal process?

16 A No, that's not totally it.

17 Q Well, let's figure out -- we'll go through
18 it methodically and we'll figure out what's totally
19 it. He also yelled, is that also part of it?

20 A Yes.

21 Q And what did he yell specifically?

22 A I don't know specifically, but he was
23 yelling and screaming, saying shoot me now, drawing
24 our attention away from the other individuals on to
25 him.

26

1 Q And that's obstructing legal process in
2 your mind?

3 A Well, Officer -- like I said, Sergeant
4 Kroll also informed us that he was to be arrested
5 for obstructing legal process.

6 Q What facts -- let's stick with what you
7 saw, then we'll talk about what Sergeant Kroll may
8 or may not have told you.

9 A I believe I already have.

10 Q Well, that's fine if you believe that.
11 Let's continue with what you saw. Have you told me
12 everything that you saw that you believed
13 obstructed legal process?

14 A Yes.

15 Q Okay. So yelling and screaming, trying to
16 sit up handcuffed behind your back, and distracting
17 officers from other people?

18 A Yes.

19 Q Okay. How did he distract the officers
20 from other people?

21 A Like I have stated three times before, he
22 kept yelling and screaming, causing a disturbance,
23 taking -- drawing our attention away from the other
24 individuals in the house is distracting us away
25 from the other individuals.

27

1 Q I see. And what was he yelling and
2 screaming?

3 MS. NELSON: Objection, asked and answered
4 several times now.

5 MR. GOINS: I don't think it's been
6 answered completely.

7 MS. NELSON: I think he stated that he has
8 answered it completely.

9 BY MR. GOINS (continuing):

10 Q Well, go ahead and answer it again
11 completely.

12 A Like I said for the fourth time now, he
13 was stating, shoot me now, yelling and screaming

14 other stuff that I couldn't understand.

15 Q Okay. So there's some things you can't
16 recall then?

17 A Yes.

18 Q And have you tried to search your memory
19 -- now I heard the shoot me now statement; I want
20 to get the other part, okay? So it may be five
21 times, all right? Some things he was yelling you
22 can't recall, is that correct?

23 A Yes, because he was yelling and he was
24 very disturbed.

25 Q He was disturbed in what sense?

28

1 A Like I said, yelling and screaming, acting
2 irrational, saying to shoot me now, take me to
3 jail, and basically just trying to draw our
4 attention to him away from all the other
5 individuals.

6 Q Who were all the other individuals?

7 A I believe there was the elderly male and
8 female, I believe there were three other females
9 and possibly -- I know there was one, maybe
10 possibly two toddlers or babies.

11 Q Were they a danger to you?

12 MS. NELSON: I'll object to the term
13 "danger" as vague.

14 MR. GOINS: Good.

15 Q Okay. Now would you answer the question,
16 please?

17 A I believe anybody in the house could be a
18 danger to us.

19 Q Including the infants, huh?

20 A Well, maybe not the infants.

21 Q But you -- nevertheless you put weapons --
22 trained weapons, including automatic weapons on the
23 infants, didn't you?

24 A No, I didn't.

25 Q Did you have an automatic weapon with you?

29

1 A No.

2 Q Did any of the officers have automatic
3 weapons?

4 A Yes.

5 Q Did you see them trained on children?

6 A No.

7 Q You didn't see any officer point a weapon
8 at a child?

9 A No.

10 Q Or at an adult holding a child?

11 A No.

12 Q Did you see the officers point the

13 automatic weapons at anyone in the residence?

14 A No.

15 Q What did they do with the automatic
16 weapons?

17 A I don't know, I wasn't in there when they
18 entered the residence.

19 Q I thought you said you were in there when
20 Sergeant Kroll was in there and he said, arrest Mr.
21 Timothy Cook.

22 A That was after they made entry and
23 handcuffed the individuals.

24 Q Well, were you in there at the same time
25 as Sergeant Kroll or not?

30

1 A After they made entry, yes.

2 Q Okay. And after they made entry the ERU
3 team was in the house, right?

4 A Yes.

5 Q And you were in the house, right?

6 A Yes.

7 Q Did you see Sergeant Kroll with an
8 automatic weapon?

9 A Yes.

10 Q Did you see him point it at anyone?

11 A No.

12 Q Why not?

13 A Because, like I stated, they made entry,
14 they do their thing, I'm sitting outside and they
15 are -- we go in after the incident appears to be
16 code four.

17 Q Well, the reason potentially you didn't
18 see Sergeant Kroll point a weapon was by the time
19 you got in there everyone was handcuffed, including
20 Timothy Cook, correct?

21 A Yes.

22 Q Okay. So you don't know what Sergeant
23 Kroll did prior to the time that you got in there,
24 correct?

25 A Correct.

31

1 Q You don't know who he pointed a weapon at,
2 correct?

3 A Correct.

4 Q So the people who you were being
5 distracted from by Mr. Timothy Cook were people who
6 were already code four secured, as you would say in
7 police jargon, by the time you entered the house,
8 correct?

9 A Yes.

10 Q Did you tell Mr. Cook to be quiet?

11 A No, I don't believe I did.

12 Q Because you were just gonna follow what
13 Sergeant Kroll told you to do, right?

14 A He's the supervisor so I was -- yes, I was
15 gonna follow his directions.

16 Q All right. And did you ever testify at
17 any trial in criminal proceedings against Timothy
18 Cook for obstructing legal process?

19 A No, I don't believe so.

20 Q Are you aware the charge against him was
21 dismissed?

22 A No.

23 Q And what, to you, is obstructing legal
24 process?

25 A To me, obstructing legal process is I go

32

1 to arrest somebody and they say -- I go to try to
2 put handcuffs on them and they try to stop me from
3 putting handcuffs on them, actively or passively
4 resist. Or if I'm trying to arrest an individual
5 and another individual comes in and tries to
6 actively, you know, stop me from effecting a lawful
7 arrest on that person.

8 Q Okay. Is that pretty much it for your
9 definition?

10 A Yes.

11 Q Who did Mr. Cook keep you from arresting?

12 A Like I said, he -- I was following the
13 orders of the entry team and Sergeant Kroll.

14 Q Who else on the entry team besides
15 Sergeant Kroll's instructions were you following?

16 A Well, basically Sergeant Kroll.

17 Q What specifically did Sergeant Kroll tell
18 you?

19 A He informed me to take Mr. Cook to jail
20 for obstructing legal process.

21 Q That was it?

22 A Yes.

23 Q He didn't tell you why?

24 A No.

25 Q Did anybody ever say, while you were

33

1 present, I'd like to see a search warrant?

2 A Not that I can recall.

3 Q Did any officer say, including Sergeant --
4 particularly supervisors, Sergeant Smallski or
5 Sergeant Kroll, here's a search warrant for the
6 house?

7 A I believe Sergeant Smallski gave them a
8 copy of the search warrant.

9 Q Why do you believe that?

10 A I believe, I think I saw that.

11 Q Did you ever hear Sergeant Smallski ask --
12 by the way, did I ask you if this was a
13 knock-and-announce?

14 A I don't know; I think you might have.

15 Q Was it?

16 A I can't remember.

17 Q Did you see the entry team knock and
18 announce?

19 A I was too far to see what they were --

20 Q I'm sorry?

21 A I was too far to see what they were doing.

22 Q Too far what?

23 A As in distance-wise.

24 Q Where were you distance-wise when the
25 entry team went into the residence?

34

1 A Probably another house down, house and a
2 half to the south.

3 MR. GOINS: Go off the record for a
4 second.

5 (Discussion held off the record.)

6 Q Where were you in relation to Sergeant
7 Smallski and Officer Blackwell when the entry team
8 went in?

9 A I don't know where they were.

10 Q Where were you?

11 A I was standing behind a tree.

12 Q Where?

13 A To the south of the house.

14 Q In the yard?

15 A No.

16 Q Where?

17 A I believe there's a fence, I was standing

18 -- then there's a sidewalk and I was standing on

19 the boulevard.

20 Q Full uniform?

21 A I believe I was in jeans, a rain vest with

22 a -- my badge on a chain around my neck.

23 Q Okay. Did you review any of the reports

24 in this case including supplements one through

25 five -- and the supplement one would be Sergeant

35

1 Smallski and Officer Blackwell's, supplement two
2 would be Officer Toscano, supplement three would be
3 Officer Blauert, supplement four would be Officer
4 Petron, P-E-T-R-O-N, supplement five would be
5 Officer House -- before you did your report for the
6 public data portion?

7 A No.

8 Q Why not?

9 A I don't read other officers' reports; I

10 only testified on what I did -- I only write what I
11 did.

12 Q Well, did you write a supplement?

13 A I believe I did. If not, I think I might
14 have put it in public info.

15 Q How about did you review supplement six of
16 Sergeant Kroll?

17 A No.

18 Q Supplement seven of Officer Nelson?

19 A No.

20 Q Supplement eight of Officer Willner?

21 A No.

22 Q I don't see supplement nine. How about
23 supplement 10 of Officer Westlund?

24 A No.

25 Q So you didn't look at any of the reports

36

1 before you did your public data report indicating
2 the reason for the arrest of Timothy Cook?

3 A No.

4 Q Do you know if Timothy Cook was injured by
5 any of the entry team before you got in?

6 A No.

7 Q Did you hear Sergeant Smallski say to
8 anyone in the house, you need to shut up?

9 A No.

10 Q Or you need to just shut up?

11 A No.

12 Q Never heard that?

13 A Nope.

14 Q Okay. Were you in the house at the same
15 time as Sergeant Smallski?

16 A Yes.

17 Q By the way, the older black male, did you
18 see him, Mr. Charles Cook?

19 A Yes.

20 Q Was he uncooperative?

21 A He was a little boisterous, but I don't
22 know about -- I mean, you could say he was
23 uncooperative, but I think we got him to settle
24 down after a little while.

25 Q Did he appear to need medical attention?

37

1 A No.

2 Q Why do you believe that?

3 A He never asked for any medical attention.

4 Q Did he look like he had any medical
5 devices on his person or body? Catheter or
6 something?

7 A If I recall, I think he had some kind of a
8 medical device.

9 Q Did you try to ascertain why he had that
10 medical device?

11 A No.

12 Q So you didn't determine if he needed
13 medical assistance once you got in the house and
14 the entry team had put him on the floor by an open
15 door in January in Minnesota?

16 A I personally didn't, no.

17 Q Did you see him on the floor by an open
18 door of the residence?

19 A When I came in I believe he was sitting
20 down already. And as a matter of fact, we had him
21 move and I believe I gave him, and I think it was
22 probably his wife, a blanket.

23 Q Did you ever find the individual you were
24 looking for?

25 A I don't believe so, no.

38

1 Q You don't know, do you?

2 A No, we didn't.

3 Q You didn't find --

4 A I don't believe we did, no.

5 Q Who told you that you didn't find him?

6 A Well, I know we didn't arrest anybody for
7 what we were looking for so ...

8 Q So you don't believe -- who were you

9 looking for, by the way, what was that person's
10 name?

11 A I can't recall his name.

12 Q Did anybody tell you his name before you
13 went in the house?

14 A Yes.

15 Q Who told you his name?

16 A I believe Sergeant Smallski and Officer
17 Blackwell.

18 Q Did you see anybody kick Mr. Timothy Cook?

19 A No.

20 Q You didn't see Sergeant Kroll kick Timothy
21 Cook?

22 A No.

23 Q Can you agree that Timothy Cook would be
24 pretty resentful if Sergeant Kroll had kicked him?

25 MS. NELSON: Objection, speculation. You

39

1 can answer if you know the answer.

2 A I don't know.

3 Q You don't have any idea that somebody
4 would be resentful if somebody -- police officer
5 had kicked him while they were --

6 MS. NELSON: Same objection.

7 MR. GOINS: That's fine, Counsel, you can

8 object, but I get to finish my question.

9 Q Do you agree that someone would likely be
10 resentful if a police officer, upon entering their
11 home, kicked them?

12 A Well, he could be.

13 Q Okay. And you didn't find out anything
14 about Sergeant Kroll's conduct before you took
15 Timothy Cook into custody, right?

16 A Like I said, I wasn't in the residence
17 when Sergeant Kroll and the entry team were in.

18 Q Did you ever hear Timothy Cook say he was
19 looking for the field sergeant?

20 A No.

21 Q And that he wanted to know the reasons for
22 the weapons being out?

23 A No.

24 Q Have you had any training in multicultural
25 issues or diversity training while you've been on

40

1 the Minneapolis Police Department?

2 A Yes.

3 Q What training have you had?

4 A Just some in-service.

5 Q When was that?

6 A Just, I mean, throughout my 12-year career
7 we've had numerous training on multicultural

8 issues.

9 Q Tell me something, one thing you've
10 learned in that training.

11 A Well, when I was in the academy I spent
12 two to three days at the -- what's it called --
13 it's at the Sabathani for the gay, lesbian,
14 bisexual, transgender office down there and I went
15 to numerous meetings and conferences with them and
16 basically saw different points of view on people's
17 sexuality and sexual preferences.

18 Q Okay. What else?

19 A I've also, through my years in the
20 department, have worked with other -- different
21 cultures, you know, not just African Americans, but
22 Somalians, Hispanics. I've learned in their
23 cultures that what -- you know, what you could say
24 that might make them mad, what you have to do to --
25 that you might not know -- what am I trying to

41

1 say -- that something that you might not think is
2 offensive in your culture might be offensive in
3 theirs.

4 Q Anything else?

5 A No, that's about it.

6 Q What was the last time you went to one of

7 these in-services?

8 A We go every year.

9 Q When was the last time you went to one of
10 these in-services?

11 A A multicultural one?

12 Q Um-hum, yes.

13 A I don't know offhand.

14 Q So you can't remember the last one you
15 went to, right?

16 A No.

17 Q Would you agree that it's misconduct for a
18 police officer to use profanity towards someone in
19 the line of duty?

20 A No.

21 Q Why is it not misconduct?

22 A I believe using profanity is a use of
23 force issue. I think it should be on the use of
24 force scale.

25 Q It is? Where?

42

1 A Not in Minneapolis. I said it should be.

2 Q So it's not, but you just think it should
3 be?

4 A I believe when I was in Tucson profanity
5 was part of the use of force. I believe sometimes
6 when you're dealing with some people that just,

7 sir, will you get on the floor doesn't work.
8 Sometimes you have to escalate your voice and
9 possibly your words to let them know that they need
10 to cooperate with you.

11 Q Well, when were in Tucson?

12 A January of '95, I believe, until August of
13 '95.

14 Q Doing what?

15 A Police officer.

16 Q Was that before you became a Minneapolis
17 officer?

18 A Yes.

19 Q So that was your first job as a police
20 officer?

21 A Well, I worked briefly in Goodview,
22 Minnesota.

23 Q Okay. Let's talk about that because I
24 missed that. What was your first job as a police
25 officer?

43

1 A Goodview, Minnesota was a part-time
2 position.

3 Q Goodhue, Minnesota?

4 A Goodview.

5 Q Goodview?

6 A Yes.

7 Q And tell me about that.

8 A I basically only worked there a couple

9 weeks and I got the Tucson Police Department job.

10 Q Okay. Why did you go to Tucson?

11 A They had a job.

12 Q And nobody else did?

13 A Well, I was applying to numerous

14 departments and they offered me a job so I took it.

15 Q Why did you leave Tucson?

16 A Because I'm from Minnesota.

17 Q So how did you find out about Minneapolis?

18 A Just -- there's a POST line that you can

19 call and they tell you all the jobs that are

20 testing or you can apply for throughout the state.

21 Q Did you ever hear any audio tape taken as

22 a result of the execution of this search warrant at

23 the Cook residence?

24 A No.

25 Q Did you see any officers making an audio

44

1 tape?

2 A No.

3 MR. GOINS: Can we go off for one second?

4 (Discussion held off the record.)

5 Q Let's go back. Who is Sergeant Michael

6 Young?

7 A He's also on the ERU, now SWAT team.

8 Q Was he there on this date?

9 A I can't remember.

10 Q You don't recall seeing him on January 14,
11 15, 2005?

12 A No, I can't recall.

13 Q So you agree that use of profanity is not
14 properly a part of the use of force report -- or
15 use of force continuum as trained on by the
16 Minneapolis Police Department; you agree with that?

17 A Yes.

18 Q So you agree that that's not a proper use
19 of force, correct?

20 A No.

21 Q So in other words, you just don't like the
22 policy, is that your position?

23 A I believe the policy should be changed.

24 Q So you believe the policy is wrong, is
25 that right?

45

1 A Yes, I do.

2 Q Okay. So which do you follow, your
3 beliefs or the policy?

4 A I follow policy, but obviously, yes, I

5 have swore at an individual in the past.

6 Q Well, so if you follow the policy and you
7 know the policy is the policy and you've sworn at
8 individuals in the past, you understand you've
9 broken the policy, right?

10 A Yes.

11 Q Or violated the policy?

12 A Yes.

13 Q And any other officer who does the same
14 thing would have also violated the policy, correct?

15 A Yes.

16 Q And that would be the improper use of
17 force, correct?

18 A No.

19 Q Who decides --

20 A It's not --

21 Q Hold on, hold on. Who decides what's an
22 improper use of force?

23 A Well, the policy, but it's not considered
24 force.

25 Q What's it considered?

46

1 A It's considered -- in the Minneapolis
2 Police Department policy it's considered basically
3 under language. If you get -- if you violate the
4 -- if you swear at somebody and they make a

5 complaint and you go down and admit to it you're
6 gonna get a -- you're gonna be found that you
7 violated the language policy that you -- you're not
8 going to be -- say that you used excessive force on
9 an individual.

10 Q Are you aware that Sergeant Kroll swore at
11 Mr. Cook?

12 A No.

13 Q Why are you unaware of that? Because you
14 don't think it happened or you just don't know it
15 happened?

16 A Like I've stated, I wasn't inside the
17 residence when they made entry.

18 Q Do you have any reason to dispute that
19 Sergeant Kroll swore at Mr. Cook?

20 A Yes, I -- I could.

21 Q You could believe that?

22 A No, I could dispute it.

23 Q How could you dispute that?

24 A Because I didn't hear it and there's
25 obviously people out there that make up accusations

1 against the police that are sometimes not true.

2 Q So you don't believe Sergeant Kroll's own
3 report then if in his own report he admitted that

4 he used profanity against Mr. Cook?

5 MS. NELSON: Objection, misstates prior
6 testimony. You can answer if you want.

7 A Like I said, I didn't read Sergeant
8 Kroll's report.

9 Q Sergeant Kroll admitted in his report that
10 he used profanity against Mr. Cook.

11 A That he obviously -- then he obviously
12 used profanity against Mr. Cook.

13 Q But you're not gonna believe it because
14 whatever Sergeant Kroll would have told you,
15 including take Timothy Cook into custody for
16 obstructing legal process, you would have done
17 sight unseen without any investigation of your own
18 if Sergeant Kroll told you to do it, correct?

19 A I believe the way you stated the question
20 was would you believe it that it could have
21 happened. I didn't know.

22 Q I said would you dispute it.

23 A I believe you said would you dispute that
24 an individual said Sergeant Kroll swore at him.
25 And I said yes, I could dispute it.

48

1 Q That's not what I said.

2 A I believe you did.

3 Q That's not what I said and the record will

4 reflect what I said. Now --

5 MS. NELSON: Objection, argumentative.

6 Q Isn't it also true --

7 MR. GOINS: Your objection's untimely and
8 therefore waived.

9 Q Isn't it also true that you took whatever
10 Sergeant Kroll said sight unseen without
11 investigation, including his statement that Mr.
12 Timothy Cook should be taken into custody for
13 obstructing legal process, just like you didn't
14 know that he used profanity, you took his word that
15 Mr. Cook should go into custody for obstructing
16 legal process, isn't that correct?

17 MS. NELSON: Objection to form, compound
18 question.

19 Q Go ahead and answer.

20 MS. NELSON: You can answer.

21 A Like I said, Sergeant Kroll is a licensed
22 police officer, he told me to arrest the individual
23 for obstructing legal process. He actually
24 arrested him for obstructing legal process and I
25 transported him to jail.

1 Q Now you're saying Sergeant Kroll -- who
2 affected the arrest, you or Sergeant Kroll?

3 A Well, they already had him handcuffed and
4 he said that he was going to be -- he was going to
5 arrested for obstructing legal process.

6 Q Handcuffed just means detained, right?

7 A Yes.

8 Q And you filled out the report, correct?

9 A I filled out the information, yes.

10 Q Because you took Sergeant Kroll at his
11 word, correct?

12 A Yes.

13 Q Did you even bother to ask him what he'd
14 done?

15 MS. NELSON: Objection, argumentative.

16 A I don't believe so, no.

17 Q How long did you stay in the house?

18 A I would say approximately maybe 30 to 45
19 minutes. I don't know off --

20 Q What did you do in that 30 to 45 minutes
21 besides take Timothy Cook into custody?

22 A At first -- well, I took Mr. Cook, I
23 escorted him to the squad car, put him in the back
24 of the squad car, went back in the house, walked
25 upstairs, noticed the condition of the house, that

50

1 it was a mess. I went back downstairs and --

2 Q Well, wait a minute. You noticed the

3 condition of the house was a mess?

4 A Upstairs, yes.

5 Q Do you know who had been upstairs prior to
6 your getting up there?

7 A No.

8 Q Do you know that the entry team had
9 already been up there?

10 A Okay, it's possible, yes.

11 Q What else did you do, please?

12 A Went downstairs, started gathering the
13 names of the individuals downstairs and I stood
14 with them until we were ready to leave.

15 Q Gathered the names of the individuals who
16 were downstairs?

17 A Yes.

18 Q Where did you write those, please?

19 A On a notepad.

20 Q Where is the notepad, please?

21 A I don't know.

22 Q Why don't you know?

23 A When I'm done with my notepads I usually
24 just toss them.

25 Q Have you looked for the notepad recently?

1 A No.

2 Q Okay. What else did you do besides write
3 names on the notepad?

4 A That's it.

5 Q What was the purpose of writing the names
6 on the notepad?

7 A Usually when we go into a house or if
8 we're dealing with people we write down their
9 names.

10 Q Did you ever ask anybody in the house,
11 we're -- say to them, we're looking for Cortez
12 Cook, can you tell us where he is, you personally?

13 A No, not me personally.

14 Q Why not?

15 A I just didn't.

16 Q What was the object of the game, as they
17 say, in going in that house?

18 A Like I stated earlier, we had information
19 that a robbery suspect was inside that house.

20 Q And you had that robbery suspect's name, I
21 trust, didn't you?

22 A Yes.

23 Q And what was that person's name?

24 A I guess it was Cortez Cook. I can't
25 remember, but I believe that's who it was.

1 Q Well, when you got to the residence

2 wouldn't it have made sense to say, is Cortez Cook
3 here, folks, we're looking for him; if he is he
4 needs to come with us and if he's not, where is he;
5 wouldn't that have made sense?

6 A Maybe other individuals did that.

7 Q Did you ever find out if other individuals
8 did that?

9 A I believe they did.

10 Q Why do you believe that?

11 A Well, because obviously that does make
12 sense to say, where is Mr. Cook.

13 Q Right. Is that why you believe it because
14 it's logical or do you have any other prescient
15 facts that you perceived through your five senses?

16 A I believe that's a logical explanation to
17 say, yes, is Mr. Cook here. But we're also gonna
18 search the house to see if Mr. Cook is there
19 because sometimes people hide.

20 Q But you didn't even know if anybody had
21 asked where he was, did you?

22 A Like I've stated before, I concern myself
23 about what I do. I'm not gonna testify what other
24 people do.

25 Q You were there and you saw what other

1 officers did and you know you're gonna concern
2 yourself with what you do, but you're obviously
3 taking orders from Sergeant Kroll, you're there
4 with Officer Blackwell as the affiant on the
5 warrant, Sergeant Smallski is your supervisor; I
6 want to figure out what you were there to do other
7 than to hold these people at gunpoint?

8 MS. NELSON: Objection, misstates prior
9 testimony regarding holding them at gunpoint. You
10 can answer.

11 Q Do you believe they were held at gunpoint?

12 A I didn't hold them at gunpoint.

13 Q How were they held; by handcuffs?

14 A Some of them were not handcuffed and
15 sitting on the couch.

16 Q Okay. So some of them were cooperating
17 obviously, just obeying the police presence, we'll
18 call it, submitting to the police presence,
19 correct?

20 A Yes.

21 Q And some of them were cuffed, correct?

22 A I believe it was just Mr. Timothy Cook.

23 Q Okay. And you guys had searched the house
24 with who? Who searched the house, the ERU or the
25 directed patrol, CRT team; who searched?

1 A The directed patrol.

2 Q And as you searched -- were you present
3 when other officers searched?

4 A When they were downstairs, yes.

5 Q Did you hear any officer say, where is
6 Cortez Cook?

7 A I can't recall.

8 Q Did you hear any officer say, you know
9 what, it looks like nobody knows where Cortez Cook
10 is?

11 A I can't recall that.

12 Q Did you hear anybody say, here's a picture
13 of who we're looking for?

14 A I can't recall.

15 Q Well, what was the object of the search?

16 A Like I've stated, we were in there looking
17 for a robbery suspect.

18 Q But you didn't even know his name.

19 A Well, I did that night.

20 Q Oh, you did?

21 A Yes.

22 Q And -- but you didn't see -- did you see
23 -- let's go through it systematically and then
24 we'll get close to the end. Did you see anybody on
25 the first floor who looked like the suspect?

1 A No.

2 Q Okay. Did you see anybody upstairs who
3 looked like the suspect?

4 A I didn't see anybody upstairs.

5 Q So nobody's upstairs and nobody downstairs
6 looks like the suspect?

7 A No.

8 Q Is that a correct or incorrect?

9 A That's correct.

10 Q All right. Why did you stay for 35
11 minutes?

12 A I also believed we were there looking for
13 a weapon that could have been used in the
14 robberies.

15 Q You believed that based on what?

16 A The briefing that Sergeant Smallski and
17 Officer Blackwell gave.

18 Q Did you find a weapon?

19 A I don't believe so, no.

20 Q Did you ask anybody in the house if there
21 was a weapon in the house?

22 A I personally didn't, no.

23 Q Then what were you doing in the search,
24 what were you specifically doing?

25 A Like I stated, I wasn't searching, I was

1 downstairs staying with the individuals that were
2 downstairs.

3 Q What were you doing as you stayed with the
4 individuals downstairs? You weren't reading them
5 bedtime stories. What were you doing?

6 A I was just standing there.

7 Q What other precincts have you worked in
8 besides the third?

9 A The downtown command.

10 Q By the way, what was the race of everybody
11 in that house except for the police officers?

12 A They were African Americans.

13 Q Did they speak English?

14 A Yes.

15 Q So I guess I didn't go to the trouble of
16 having this CAPRS report marked as an exhibit,
17 maybe I should, but all the information in the
18 CAPRS report other than supplements, would it be
19 fair to say you entered that information?

20 A The general information, yes. Like the
21 incident address, the --

22 Q Arrested person, the other persons and so
23 forth?

24 A Yes.

25 Q So obviously you got the name of Timothy

57

1 Blake Cook; he's the arrested person, correct?

2 A Yes.

3 Q You got the name of Charles Everett Cook
4 as an other person, correct?

5 A Yes.

6 Q By the way, why do you say that Mr. Cook's
7 appearance was dirty?

8 A The -- Mr. Timothy Cook?

9 Q Charles Everett Cook, the man who is
10 approximately 69 or 70 years old.

11 A I think he was disheveled and dirty.

12 Q Were you aware of the fact that he was ill
13 and that he was on dialysis?

14 A Well, that's still -- even if you're ill
15 you could be dirty.

16 Q Yeah. How about that Mekala Shonda (ph)
17 Morris, you have her as an other person. Where was
18 she in the house?

19 A I believe she was sitting on the couch in
20 the -- in the lower level.

21 Q How about Jaquida (ph) Ann Cook, where was
22 she in the house?

23 A Is she a younger female?

24 Q According to your report, a 22-year-old
25 female.

58

1 A I believe she was seated on the couch also
2 in the lower level.

3 MR. GOINS: Counsel, there's no supplement
4 nine and I have, it looks like, a complete CAPRS
5 report for MP-05-0100496, but for some reason
6 there's no supplement nine. I wonder why. If you
7 could find that, I'd appreciate it.

8 MS. NELSON: I will look for that.

9 Q Were you in the home at the same time as
10 Officer Roger Smith was in there?

11 A I believe so.

12 Q See him point his weapon at anyone?

13 A No.

14 Q Did he tell you that he had to use force
15 on anyone?

16 A No.

17 Q Did you have a debriefing after the
18 search?

19 A No.

20 Q So it would be fair to say that you heard
21 no officer say, hurry up, old man, shut the fuck
22 up, get the fuck downstairs; is that fair to say
23 you never heard that?

24 A Yes, it is fair to say that I didn't hear
25 it.

1 Q And you never heard someone say, shut the
2 fuck up and get down on the floor; did you hear
3 that?

4 A No, I didn't.

5 Q You never heard someone say, you need to
6 learn some fucking respect?

7 A No.

8 Q But again, you didn't hear Sergeant Kroll
9 use any profanity, right?

10 A No.

11 Q But Sergeant Kroll admits in his report,
12 I'll represent to you, that he did use profanity so
13 do you believe Sergeant Kroll if he said that in
14 his report?

15 A Yes.

16 Q Did you hear anybody say, sit down, shut
17 the fuck up and get your hands up?

18 A No.

19 Q Did you hear somebody say when they asked
20 to see a search warrant, we don't have to show you
21 a fucking thing, my dad -- I'm sorry, strike that.
22 We don't have to show you a fucking thing; did you
23 hear anybody say that?

24 A No.

25 Q Did you hear anybody say, shut the fuck

60

1 up, old man, before I shoot you in the belly; did
2 you hear that?

3 A No.

4 Q But again, you weren't in the house until
5 after the CRT team -- or the entry team, rather,
6 had called code four or secure, correct?

7 A That's correct.

8 Q How long was that period of time from the
9 time they went in until they called the code four
10 clear?

11 A I believe it was probably a couple
12 minutes.

13 Q Did you hear somebody say to Mr. Timothy
14 Cook, the one who Sergeant Kroll told you to
15 arrest, Mr. Mouth, and told him that he was going
16 downtown? Did they call him Mr. Mouth?

17 A I didn't hear that.

18 Q So you heard the officer say please and
19 thank you?

20 A I don't know if they said please or thank
21 you.

22 Q Did you hear the officers make any
23 requests of these people in this home?

24 A Yes.

25 Q Well, what requests did you hear them

61

1 make?

2 A When I was inside Mr. Cook was still
3 yelling and people were telling him, you know, shut
4 up, be quiet.

5 Q And the shut up and be quiet was necessary
6 because otherwise it would distract officers from
7 doing what? Finding someone who had been described
8 to them in the photograph?

9 A It's distracting the officers from
10 everybody else in the house.

11 Q And that's the shut up and -- the talking
12 or saying anything is distracting, is that why he
13 had to be arrested?

14 A That's not the only reason he was
15 arrested.

16 Q Because -- and also because he was sitting
17 up?

18 A No.

19 Q Well, give me the rest of it one more
20 time, then we'll probably be done after we look at
21 some pictures. He was sitting --

22 MS. NELSON: Objection, asked and
23 answered.

24 Q He's sitting up, he's distracting the
25 officers, and what else is he doing?

62

1 A Like I've stated before, when I entered a
2 few moments later Sergeant Kroll informed me that
3 he was to be transported to jail because he was
4 arresting him for obstructing legal process.

5 Q Have you ever had anybody when you went in
6 on search warrants -- you've gone in on other
7 search warrants before, haven't you?

8 A Yes, as a uniformed police officer.

9 Q So would the answer be yes?

10 A Yes.

11 Q And when you went in on those search
12 warrants have you ever had people ask to see the
13 warrant?

14 A Me, no.

15 Q I didn't mean ask you. Have you ever
16 heard someone, while you were in on a search
17 warrant, ask to see a search warrant?

18 A Yes.

19 Q Are you trained on a response that you're
20 supposed to provide when someone asks to see the
21 search warrant?

22 A You give them the search warrant.

23 Q Did you see anybody give these people a
24 search warrant when they went into their home?

25 A I believe we were given the search warrant

63

1 after the entry team made entry, it was code four.

2 Q Could you imagine that people would be
3 alarmed and disturbed when they see police officers
4 come into their home at 10:00 at night --

5 MS. NELSON: Objection, speculation.

6 MR. GOINS: Can I finish the question?

7 MS. NELSON: Sounded like you were
8 finished.

9 MR. GOINS: Doesn't sound like that at
10 all.

11 BY MR. GOINS (continuing):

12 Q Can you imagine that people would be
13 resentful and alarmed and disturbed when someone
14 comes in their home -- police officers come into
15 their home at 10:00 in the evening in the middle of
16 winter in Minnesota and they have no reason why and
17 they ask for a search warrant and they don't get a
18 search warrant; can you imagine that that could
19 create alarm, disturbance, resentment?

20 MS. NELSON: Objection, speculation.

21 MR. GOINS: No, it isn't; it calls for his
22 opinion. I don't want him to speculate, I asked
23 him to give his opinion.

24 A Well, like I said, we did -- a search

25 warrant was produced after the entry team had

64

1 entered.

2 Q And the entry team was in there for how
3 long again?

4 A A couple of minutes.

5 Q And you don't know what went on when the
6 entry team was in there, correct?

7 A That's correct.

8 Q So in your opinion, people are just
9 supposed to lie down on the ground, be handcuffed
10 and sit still until the police officers tell them
11 that they have lawful authority to come into their
12 home unannounced; is that your opinion?

13 A Well, I -- from what I have seen in the
14 past, 99 -- well, a hundred percent of the time the
15 entry team, if they kick in the door they yell,
16 search warrant, police.

17 Q You never heard that on this occasion, did
18 you?

19 A Like I said, I was too far away to hear
20 what they were doing.

21 Q So would it be fair to say that you don't
22 know if they even announced their authority as they
23 entered the residence; true or false?

24 A True.

25 MR. GOINS: Thank you. I'm done.

65

1 MS. NELSON: We'll read and sign.

2 (Deposition concluded at 2:08 p.m.)

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1 STATE OF MINNESOTA)
) ss
2 COUNTY OF HENNEPIN)

3

4

5

I hereby certify that I reported the
6 deposition under oath of MARK A. JOHNSON, on the
29th day of March, 2007, in Minneapolis, Minnesota,
7 and that the witness was by me first duly sworn to
tell the whole truth;

8

That the testimony was transcribed under
9 my direction and is a true record of the testimony
of the witness;

10

That the cost of the original has been
11 charged to the party who noticed the deposition,
and that all parties who ordered copies have been
12 charged at the same rate for such copies;

13

That I am not a relative or employee or
attorney or counsel of any of the parties, or a
14 relative or employee of such attorney or counsel;

15

That I am not financially interested in
the action and have no contract with the parties,
16 attorneys, or persons with an interest that affects
or has a substantial tendency to affect my
17 impartiality;

18

That the right to read and sign the
deposition by the witness was reserved.

19

WITNESS MY HAND AND SEAL THIS 1st day of
20 April, 2007.

21

22

23 Jane C. Norman, RPR
 (SEAL) Notary Public
 24 Hennepin County, Minnesota
 My commission expires: 1/31/2010
 25

Plain Text Attachment

1

1 STATE OF MINNESOTA DISTRICT COURT
 2 COUNTY OF HENNEPIN FOURTH JUDICIAL DISTRICT

 3 Charles Everett Cook, Sylvia Mae Cook,
 and Timothy Blake Cook, natural persons,
 4
 Plaintiffs,
 5
 v.
 6
 City of Minneapolis, a municipal entity; Minneapolis
 7 Police Officer Mark Johnson, Badge #003459, in his
 individual, personal and official capacity; Sgt. D.
 8 Smulski, in his individual, personal and official
 capacity; Officer K. Blackwell, in his individual,
 9 personal and official capacity; Officer Geoffrey
 Toscano,
 Badge #007257, in his individual, personal and official
 10 capacity; Officer Bevan Blauert, Badge #003459, in his
 individual, personal and official capacity; Officer Jon
 11 Petron, Badge #5671, in his individual, personal and
 official capacity; Officer Christopher House, Badge
 #3165,
 12 in his individual, personal and official capacity; Sgt.
 Robert Kroll, Badge #003874, in his individual,
 personal
 13 and official capacity; Officer Christie Nelson, Badge
 #4959, in his individual, personal and official
 capacity;
 14 Officer William Willner, Badge #7783, in his
 individual,
 personal and official capacity; Officer Westlund, Badge
 15 #7674, in his individual, personal and official
 capacity;
 16 Officer Roger Smith, Badge #006689, in his individual,
 personal and official capacity; Officer Jason King,
 Badge
 #003704, in his individual, personal and official

17 capacity; Officer Timothy Hanks, Badge #002660, in his
Officers individual, personal and official capacity; and
18 Jane Doe and Richard Roe, unknown and unnamed
Minneapolis Police Officers, in their individual, personal and
19 official capacities;
20 Defendants.

21 DEPOSITION OF
22 LIEUTENANT ROBERT KROLL
23 Taken March 28, 2007
Scheduled for 1:15 p.m.
24
Reported By: Lori Morrow, RPR, CRR
25 PARADIGM REPORTING & CAPTIONING INC. (612) 339-0545

2

1 Deposition of LIEUTENANT ROBERT KROLL, taken on
2 the 28th day of March, 2007, commencing at 1:15 p.m.,
at
3 the CITY OF MINNEAPOLIS ATTORNEY'S OFFICE, 333 South
7th
4 Street, Suite 300, Minneapolis, Minnesota, before Lori
5 Morrow, Registered Professional Reporter and Certified
6 Realtime Reporter and a Notary Public in and for the
7 State of Minnesota.

8
9

APPEARANCES:

10
11

On Behalf of the Plaintiffs:

12 Maya C. Sullivan, Esquire
LAW OFFICE OF MAYA C. SULLIVAN, L.L.C.
941 Hillwind Road NE
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Minneapolis, Minnesota 55432
14 (763) 515-0092

Fax (763) 515-0093

On Behalf of the Defendants:

Tracey L. Nelson, Esquire
CITY OF MINNEAPOLIS ATTORNEY'S OFFICE
333 South 7th Street
Suite 300
Minneapolis, Minnesota 55402
(612) 673-2063

NOTE: The original transcript will be
delivered to Maya C. Sullivan, Esquire, pursuant to the
applicable Rules of Civil Procedure.

3

INDEX

WITNESS:

Lieutenant Robert Kroll

EXAMINATION BY: PAGE:

Ms. Sullivan.....4, 40

Ms. Nelson.....38

OBJECTIONS BY:

Ms. Nelson.....18, 21, 22, 23, 24, 25, 35,

40

EXHIBITS MARKED AND REFERRED TO: (NONE)

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1 LIEUTENANT ROBERT KROLL,
2 duly sworn, was examined and testified as follows:

3 EXAMINATION

4 BY MS. SULLIVAN:

5 Q Sergeant Kroll, as I said, I'm Maya Sullivan,
6 and I'm one of the attorneys who represents the
7 Plaintiffs in this matter. The other attorney is
8 Mr. Albert Goins, whom you may or may not know.

9 Just for the record initially, can you please
10 state and spell your first and last name?

11 A Robert, R-O-B-E-R-T, Kroll, K-R-O-L-L.

12 Q All right. And, Sergeant Kroll, have you
13 participated in depositions in the past?

14 A Yes.

15 Q Okay. I just want to give you a few reminders
16 about procedure before we get started.

17 First, I will be asking you questions
18 throughout. Your attorney may follow up with some
19 additional questions. She may also at times object to
20 things. Please just make sure you wait for her
21 instructions regarding whether to answer or not answer.

22 Additionally, I do need you to give verbal
23 answers. So please no nodding of the head and "uh-huh"
24 and that type of thing.

25 Do you have any questions before we get started?

5

1 A No.

2 Q Okay. Sergeant Kroll, who is your employer?

3 A City of Minneapolis. Also, I'm a lieutenant.

4 Q I'm sorry, Lieutenant. Do we have sergeant
5 somewhere? Sorry about that. All right. Lieutenant
6 Kroll, how long have you been with the Minneapolis Police
7 Department?

8 A Since January of 1989.

9 Q And prior to beginning with the Minneapolis
10 Police Department, were you working in the same field or
11 doing something different?

12 A No. This is my first police job.

13 Q Okay. And your assignment -- your current
14 assignment with the Minneapolis Police Department is
15 what?

16 A Second Precinct patrol supervisor.

17 Q And did you have that position at the time of
18 the incident which was January 13 of 2005?

19 A No.

20 Q Okay. What was your position at that time?

21 A I believe I was a sergeant assigned to the Water
22 Works Unit.

23 Q Okay. And what is the Water Works Unit?

24 A It's a unit that no longer exists, but we had
25 personnel there for a homeland security mission due to

6

1 the water level threats.

2 Q Okay. And at the time of the incident, were you
3 also part of the SWAT team, or emergency response unit?

4 A Yes.

5 Q Okay. And how long had you been part of that
6 unit?

7 A Total time, approximately 15 years.

8 Q Okay. All right. And in order to be on the
9 SWAT team, do you receive any specific or specialized
10 type of training different than just a standard police

11 officer may receive?

12 A Yes.

13 Q Okay. Is that ongoing training, or is it just a
14 one-time type of a training?

15 A There's initial and then ongoing, both.

16 Q Okay. How are people selected to participate on
17 that team --

18 A There's a --

19 Q -- or apply for it?

20 A -- number of factors.

21 Q Okay.

22 A Background, history with the department, resume,
23 oral interview, physical agility test, weapons
24 qualifications.

25 Q So it is similar to actually getting another

7

1 position within the department then?

2 A Yes.

3 Q Okay. All right. And within your training for
4 the team or conducting high risk entries, do you ever
5 receive any specific training or special training
6 regarding how to handle ill persons or elderly persons
7 when conducting these type of entries?

8 A I don't recall any specialized training as a
9 part of SWAT for that, no.

10 Q Have you received specialized training at any

11 time as a police officer in this type of -- in dealing
12 with those type of individuals?

13 A Yes.

14 Q Okay. And what have you learned? What kind of
15 training have you received about that?

16 A It's too tough to recall. I've received
17 different types of in-service training on dealing with
18 persons with disabilities. I don't recall specifically.

19 Q Okay. But is it safe to say that you generally
20 would not treat, say, a person who was crippled and
21 couldn't walk the same as you would treat an able-bodied
22 adult when you're encountering them in an entry?

23 A On an entry, that depends on the circumstances.

24 Q Okay. What would be the circumstances?

25 A Well, high risk entries are different in

8

1 themselves. They're high risk for a reason. So anybody
2 there, potentially, has the capability of being armed.

3 Q Okay. Do you know, just give me a ballpark
4 figure, about how many of these high risk entries do you
5 conduct or are you part of maybe in the scope of a year
6 or so?

7 A That fluctuates.

8 Q Okay. Can you give me a range, please?

9 A Years ago we would do 700 a year. And now

10 they're down to probably 200 a year.

11 Q Okay. And when you say we, what -- do you mean
12 that you would be part of or do you mean that the
13 department would do?

14 A The SWAT team would do.

15 Q Okay. And are you on every entry that the SWAT
16 team does?

17 A No. It's rotational.

18 Q Okay. And so I'm asking specifically about your
19 involvement or participation. How many would you say
20 that you have personally done? And again, it doesn't
21 have to be an exact number.

22 A Personally, over my career with SWAT, it's
23 somewhere in the neighborhood of 2,000 high risk entries.

24 Q Okay. And so how many approximately would you
25 say you do a year, which was my original question.

9

1 A Oh, a year?

2 Q Uh-huh.

3 A That depends, because I'm somewhat promoted out
4 of SWAT. I'm still in, but I'm in another position. I'm
5 not in the full-time unit. The full-time unit, they do
6 them on a daily basis. So right now, I think, last year,
7 I did around 35.

8 Q Okay. And at what points were you promoted to
9 the Second Precinct patrol supervisor position?

10 A I was promoted last April and transferred to the
11 Second Precinct in June.

12 Q Okay. So before you were promoted in April of
13 last year, how many do you think you were averaging per
14 year?

15 A Again, that prior year I was assigned to STOP,
16 which is our full-time SWAT, so I did more. I don't have
17 a number. And then prior to that, I was at Water Works,
18 so I did less. It's just a fluctuating number.

19 Q Okay. Thank you. And were you part of the team
20 that entered 3845 Second Avenue South in Minneapolis on
21 January 13 of 2005?

22 A Yes.

23 Q Okay. And what information were you provided
24 with prior to the entry?

25 A There was a high likelihood that there was armed

10

1 robbery suspects inside that location.

2 Q Suspects, plural, or one?

3 A At least one, possibly more.

4 Q Were you given the name of the alleged
5 individuals?

6 A At the time, I believe so.

7 Q Okay. You were given two names?

8 A No. A name.

9 Q Okay. And were you given a description, a
10 physical description of the individual?

11 A Yes.

12 Q What would the physical description have
13 included? I don't need specifics, but what types of
14 details would you have been given?

15 A Sex, age, race.

16 Q Okay. Do you recall what the identifiers were
17 in this case?

18 A Younger adult, black male.

19 Q Okay. Did you conduct the briefing that took
20 place prior to the entry?

21 A Yes.

22 Q Okay. And what information did you provide the
23 officers who were part of the briefing?

24 A The briefing is twofold. The affiant, or the
25 unit that we're supporting, it gives a brief on the

11

1 subject and what the warrant is about. And then I do the
2 brief for the team for positions, assignments, and entry
3 method.

4 Q Okay. And what information did you give the
5 team about who you were looking for, what you were doing,
6 why you were going there?

7 A Again, that's the affiant. I don't give that to
8 the team.

9 Q Okay. Do you know what the affiant gave, what
10 information was given?

11 A Just general terms, it was a -- the description
12 I provided, that it was for an armed robbery suspect.

13 Q Okay. And are you aware of whether or not the
14 robbery suspect was arrested?

15 A No.

16 Q No, he wasn't arrested, or no --

17 A I'm not aware.

18 Q Did you see him?

19 A I saw two parties meeting the description.

20 Q Okay. And were either of those individuals --
21 I'm sorry. Strike that.

22 What was the condition, physical condition of
23 those individuals that you say met that description?

24 A What do you mean by physical condition?

25 Q Were either of them injured?

12

1 A No.

2 Q Neither of them were injured?

3 A Not to my knowledge.

4 Q Okay. If someone was wearing a cast, would you
5 notice that?

6 A I believe so.

7 Q Okay. Are you aware of whether anybody other

8 than the robbery suspect was arrested as a result of the
9 accident?

10 A No, I am not.

11 Q You state in your police report that the robbery
12 suspect was likely to be armed and to confront police if
13 encountered. Was the suspect armed?

14 A No.

15 Q Did he confront you or any of the officers?

16 A No.

17 Q You state that you yelled "police search
18 warrant" throughout the residence when you were entering.
19 However, you did not show the warrant to the occupants at
20 their request, did you?

21 A Which part was the question? Yes, I did yell
22 "police" throughout. Did I show them paper? No.

23 Q All right.

24 A Two questions.

25 Q And who did show them the search warrant?

13

1 A Specifically, I don't know.

2 Q Okay. But it wasn't you?

3 A No.

4 Q Did you see anyone show it to them?

5 A I don't recall that.

6 Q In your report, you state that you poke checked
7 the older male with your weapon muzzle and forced him

8 downward and then kicked him down onto the ground. You
9 did this even though you noticed that he was elderly?

10 A I wouldn't consider him too elderly to be forced
11 to the floor when he's not compliant.

12 Q Well, you specifically said he was elderly. So
13 I'm just trying to clarify.

14 A Right.

15 Q You did that even though you acknowledge he
16 was --

17 A He was the older person of the home. And I did
18 use force to put him on the ground to overcome his
19 resistance.

20 Q Right. You said you kicked him down onto the
21 ground.

22 A That's what it says, yes.

23 Q Okay. And did you notice the stint in his neck?

24 A No.

25 Q If you had noticed the stint, would you have

14

1 kicked him?

2 A In the manner that I -- I know the report says
3 "kicked." In the manner that I did it, yes.

4 Q And what manner would that be?

5 A I used my foot and assisted him with the bottom
6 of my foot to push him to the ground. It wasn't a kick

7 with a thrust to my toe for pain compliance impact. It
8 was a push with my foot to the bottom. The bottom -- the
9 sole of my foot pushing him down.

10 Q And you would have put the foot at where on his
11 body then in order to accomplish that?

12 A I don't recall specifically. I would have to
13 review my report.

14 Q Your report doesn't say. But I'm just trying to
15 get an understanding of, you said that you didn't do it
16 to impact force or pain on him, but you did it just to
17 get him to the floor.

18 A Right.

19 Q So I'm just trying to understand how you would
20 place your foot on him to accomplish just getting him on
21 the floor as opposed to causing pain to him. How would
22 you -- how would you do that? How would your foot be
23 placed?

24 A With the sole -- again, with the sole of my foot
25 somewhere to his body, probably midsection area, and push

15

1 down.

2 Q Okay. And how long did you leave him on the
3 ground?

4 A I don't know.

5 Q Did you notice the weather?

6 A The weather?

7 Q Uh-huh.

8 A No.

9 Q Do you recall him asking for a blanket or
10 something to cover him up with?

11 A No.

12 Q Okay. Had he asked for a blanket, would you
13 have provided him with one?

14 A Would I have at the entry point?

15 Q Yes.

16 A No.

17 Q Would you have instructed or allowed someone
18 else to provide him with a blanket had he asked for one
19 or had you heard him ask for one?

20 A After the scene is secure, yes. That's not up
21 to me. We're in there for a matter of minutes, so we
22 secure everybody. And when everybody in the house is
23 secure and there are no longer threats, we leave. So
24 it's up to the affiants what happens from there on.

25 Q Okay. So my question was, if you had heard him

16

1 ask for a blanket or a cover, and the scene was secured,
2 would you have provided one to him or instructed someone
3 to give him one?

4 A Me, no.

5 Q Okay. And do you recall whether or not the

6 front door of the house was opened while the incident was
7 going on?

8 A No, I don't recall.

9 Q Okay. And are you one of the individuals who
10 went to one of the other levels of the house, the lower
11 level or the upper level or the --

12 A Yes.

13 Q -- third level?

14 A Yes.

15 Q Okay. Which level did you go to?

16 A Every one of them. Possibly not the basement.

17 Q Okay. When you came into the home, explain to
18 me what you observed.

19 A Numerous people in the living room portion of
20 the house, which led to the front entrance.

21 Q You say numerous people. Were any of them women
22 or any of them men?

23 A Several women and children we initially
24 encountered.

25 Q About how many women would you say you saw?

17

1 A I would have to guess.

2 Q That's fine.

3 A Again, without reviewing my report, three or
4 four.

5 Q And about how many children?

6 A Seven or eight.

7 Q Do you recall if there was a basic age range of
8 the children who were present?

9 A Mainly younger, meaning, you know, three, four.

10 Q Okay. Do you recall any infants?

11 A Not specifically.

12 Q What was the demeanor of the women and children?

13 A They were upset.

14 Q Anything else?

15 A No.

16 Q Were they scared?

17 A I believe so.

18 Q Did you feel that the women or children
19 presented a threat to you or any of the officers?

20 A Initially, everyone is a threat until you make
21 an assessment and see their hands. At that point, they
22 were not. We didn't handcuff the women. We let them
23 hold onto the children.

24 Q But you did put guns in their faces?

25 A That's a difficult term. I wouldn't say we put

18

1 guns in their faces. If I was to put a gun in your face,
2 I would walk right up to you and put the gun in your
3 face. We have our firearms drawn. Everywhere our
4 eyes -- our firearms are out, and they go everywhere our

5 eyes look within the house. So at different times,
6 they're pointed at people. But I wouldn't consider it
7 gun in face.

8 Q Okay. So you pointed the guns at the women and
9 children?

10 A Everywhere our eyes go, the muzzle of our
11 weapons goes.

12 Q Okay. So again, you pointed -- so then,
13 obviously, your eyes went and looked at the women and
14 children.

15 A Yes.

16 Q So you're saying that you did put the guns in
17 the faces of the women and children, correct?

18 MS. NELSON: Objection. That
19 mischaracterizes his testimony.

20 BY MS. SULLIVAN:

21 Q I'll rephrase it. You did point the guns at the
22 women and children, correct?

23 A Yes.

24 Q Okay. Do you normally point guns at children?

25 A Every time in a high risk entry.

19

1 Q Okay. I'm confused, because one of the other
2 officers testified that they don't usually point guns at
3 children in these type of entries. So I'm trying to get
4 some understanding and clarification about what the

5 actual procedure is. So are you telling me that at every
6 high risk entry you do point guns at children?

7 A We don't keep weapons trained and pointed and
8 aimed at children, but --

9 Q I understand what you're saying.

10 A -- throughout the course of a high risk entry
11 when you're scanning for safety reasons, every portion of
12 that house, the muzzle of your weapon does pass past
13 everyone in the house.

14 Q Okay. So your answer is yes, you do point guns
15 at children? That's my question.

16 A Well, if you want to mischaracterize it as that,
17 yes. There's a difference, ma'am, between pointing and
18 scanning.

19 Q Okay. I'm just using the language that you
20 used, Lieutenant Kroll. You previously said what you do
21 is you point the guns at them. If you look at them, then
22 your gun goes that way. That's what you said. So I'm
23 just using your language.

24 A Okay.

25 Q And if you want to clarify --

20

1 A I would like to --

2 Q -- it, then you can do that.

3 A -- clarify. During the course of scanning for

4 our safety, the entire portions of every part of the
5 house our weapons scan, and they pass through. Wherever
6 our eyes look, the muzzle of our weapons are pointing.
7 So at some point or another, the weapons do pass through
8 the bodies of everybody involved when you're looking.
9 And in this case, there were so many children everywhere,
10 at some point or another most of our weapons had to have
11 pointed their direction. Now, sticking the gun in their
12 face and pointing a gun at them is quite a different
13 characterization of what we're doing.

14 Q Okay. So you basically are surveying the area?

15 A Yes.

16 Q That's what you're saying? I'm just trying to
17 get an understanding.

18 All right. And so once you did that with the
19 women and children who were in the area, did you perceive
20 a reason to cuff them at all?

21 A No.

22 Q Okay. And that's because you didn't feel they
23 were presenting as a threat to you or any of your
24 officers at that point?

25 A After we initially see the hands of the adults,

1 and they're free of weapons, we will pass and make an
2 assessment. It's on the circumstances. If there would
3 have been females with no children, we would have applied

4 cuffs. But due to the number of children in there, we
5 did not cuff in this situation. We let them attempt to
6 calm the children.

7 Q Okay. I'm just trying to clarify whether or not
8 you perceived them as a threat. After you surveyed the
9 situation and the circumstances, did you perceive the
10 women as a threat?

11 A No.

12 Q Okay. Did you perceive the children as a
13 threat?

14 A No.

15 Q Okay. How many times have you been a defendant
16 in a similar lawsuit as this one?

17 MS. NELSON: Objection, relevance.

18 You can answer.

19 THE WITNESS: You need to clarify the
20 question more. How many times have I been sued as
21 a result of a high risk entry?

22 BY MS. SULLIVAN:

23 Q Yes.

24 MS. NELSON: Same objection.

25 Go ahead and answer.

22

1 THE WITNESS: I don't know that I have.

2 BY MS. SULLIVAN:

3 Q What about other types of entries non-high risk?

4 MS. NELSON: Same objection.

5 Go ahead and answer.

6 THE WITNESS: I don't believe I have.

7 BY MS. SULLIVAN:

8 Q So you're saying you've never been a named
9 defendant in a case resulting from an entry into
10 someone's home?

11 A An entry meaning?

12 Q Well, first you said not in high risk, so then I
13 said what about non-high risk situations, which takes
14 care --

15 A I don't believe I --

16 Q -- of everything else.

17 A -- have. I've been -- I was sued once as a
18 result of an officer needs help call where I entered a
19 home. So I guess you've got to break the question down.
20 Are you looking for high risk, or are you looking for any
21 time I've been in a home or -- I don't understand.

22 Q Any time you've entered a home, have you ever
23 been sued as a defendant or been a named defendant in a
24 suit due to that?

25 MS. NELSON: Same objection.

23

1 Go ahead and answer.

2 THE WITNESS: I've never been sued in a

3 high risk entry before. There was one other time
4 where I entered a home and was sued.

5 BY MS. SULLIVAN:

6 Q Okay. And how many internal affairs complaints
7 have been filed against you?

8 A I don't know.

9 MS. NELSON: Objection, relevance.

10 BY MS. SULLIVAN:

11 Q Have there been any?

12 MS. NELSON: Same objection.

13 Go ahead and answer.

14 THE WITNESS: Have there been any internal
15 affairs complaints filed against me?

16 BY MS. SULLIVAN:

17 Q Yes.

18 A Yes.

19 Q About how many do you think?

20 A I don't know.

21 MS. NELSON: Same objection.

22 BY MS. SULLIVAN:

23 Q More than one?

24 MS. NELSON: Can I just do a standing
25 objection on these of relevance?

24

1 MS. SULLIVAN: Well, that's fine.

2 MS. NELSON: Okay.

3 MS. SULLIVAN: They're relevant, though,
4 because of the allegations of this particular
5 matter.

6 MS. NELSON: That's not for us to decide.
7 I'm just objecting.

8 You can ask the question.

9 I'm not instructing him not to answer.

10 BY MS. SULLIVAN:

11 Q More than one? I'll continue with my questions,
12 Lieutenant.

13 A Yes.

14 Q All right. Do you think more than five?

15 A Yes.

16 Q More than ten?

17 A Yes.

18 Q More than fifteen?

19 A I don't know.

20 Q Okay. But for sure more than ten?

21 A Yes.

22 Q Okay. Do you know the reason they were filed?

23 A There's a wide variety.

24 Q Okay. There's probably one reason or a couple
25 reasons that are the main ones that you've had. If not,

1 just give me a couple. Give me an idea of what the

2 reasons for the complaints were.

3 MS. NELSON: I'm going to object to the
4 extent that this calls for private data. He can
5 only answer with respect to allegations that have
6 been sustained.

7 MS. SULLIVAN: Well, actually, I'm not
8 asking for a detailed description of what the
9 complaint may have contained. What I'm asking for
10 is what reason was given for the complaint. And
11 that's a different question. And that information
12 is actually on-line. I've personally viewed it.
13 So it's not private information. It's public if
14 it's on the Internet, so.

15 MS. NELSON: It's my understanding that
16 the only information that is public is if the
17 allegations have been sustained.

18 MS. SULLIVAN: The information I viewed
19 says the reason for the complaint as well as
20 whether it was sustained or not actually.

21 MS. NELSON: And are you saying that
22 you've looked --

23 MS. SULLIVAN: So I'm just asking -- I'm
24 trying to get an understanding.

25 MS. NELSON: Okay. Well, I'm going to

1 instruct you to only answer to the extent of
2 allegations that have been sustained.

3 BY MS. SULLIVAN:

4 Q Okay. That's fine. So if you can answer the
5 question then regarding sustained allegations, what the
6 reason for the internal affairs complaint was.

7 A Failure to wear a seat belt, failure to give
8 name and badge number.

9 Q Have you ever been suspended during your time as
10 a Minneapolis Police officer?

11 A Yes.

12 Q Were you suspended as a result of the January
13 13, 2005, incident?

14 A No.

15 Q You said in your report that you began using
16 profanities and threatened to shoot the elderly man. Why
17 would you begin to use profanities at him?

18 A Because he was not compliant throughout my
19 course of entry and giving him verbal commands.

20 Q What words did you use?

21 A I don't recall specifically.

22 Q Do you usually use profanities in order to make
23 someone comply with your orders?

24 A As part of our force continuum, if a subject is
25 noncompliant --

1 [Reporter's Note: People talking
2 loudly in the hallway outside the
3 conference room.]

4 MS. NELSON: Hold on. Can we go off the
5 record, please?

6 (Off the record)

7 MS. NELSON: I'm sorry.

8 BY MS. SULLIVAN:

9 Q All right. I'll restate the question. Do you
10 normally use profanities if you are trying to get someone
11 to be compliant with your orders?

12 A Normally, no.

13 Q Okay. And what gets it to the point where you
14 feel that you do need to use profanity?

15 A If the threat level is high enough to me, and I
16 feel I can accomplish what I'm trying to do in a more
17 expedient manner by using a threatening tone and/or
18 profanities to gain compliance, I will do that in certain
19 situations.

20 Q You say if the threat level is high enough. And
21 so what would make the threat level high enough?

22 A When we have armed robbery, at least an armed
23 robbery subject still somewhere within the house, and
24 you've got someone blocking your entryway to get to him.

25 Q Okay. So you're talking about if the overall

1 threat level is high enough, not with that specific
2 individual that you're encountering?

3 A Combination of both.

4 Q Okay. So then if it's a combination of both, I
5 want to ask then about the elderly gentleman you were
6 encountering. Did you perceive a threat by him in the
7 encounter that you all had?

8 A Yes.

9 Q What was the threat you perceived from the
10 elderly gentleman?

11 A Well, when he's blocking your access to search
12 other areas of the house, and he has another male near
13 him that's large, neither of which is complying with
14 verbal commands at gunpoint to get on the ground and
15 prone their hands -- get down and show their hands -- to
16 prone out and show their hands, it's been my training and
17 experience that they're, A, either concealing a weapon,
18 planning a counter attack or stalling so evidence can be
19 destroyed or a threat could be launched against us.

20 Q I'm sorry. Can you clarify the last part what
21 you said, or a threat can be lodged against us?

22 A Launched against us.

23 Q Okay. Explain what you mean by that.

24 A Well, when you have an armed robbery suspect
25 that could be a high likelihood that's armed in another

1 room, and they're distracting you, and you have to deal
2 with that person, your threat level increases when that
3 noncompliant person draws your attention away from areas
4 where there are armed suspects inside yet. So if I have
5 to turn my back in order to deal with him and his
6 noncompliant manner, I'm subject to being shot in the
7 back, the side, whatever, without being able to defend
8 myself.

9 Q Okay. I just want to ask you a few more
10 questions. You keep talking about suspects, and I just
11 want to get some clarification here. Did you ever become
12 aware once this entry began that there was more than one
13 suspect?

14 A I'm going by recollection. I'm sure there was
15 at least one.

16 Q Okay. Right. Otherwise you wouldn't have been
17 there if there wasn't at least one suspect. Isn't that
18 correct?

19 A That depends again on the circumstances. They
20 could have done -- they could have taken the subject off
21 outside the house and still had us execute a high risk
22 warrant. That's been done before.

23 Q Right. But he wouldn't have been there, but --
24 all right. Moving on. Was the individual suspect
25 someone who had a gun or weapon on him when you found

1 him?

2 A Not visible to me.

3 Q Were any weapons or guns found within the
4 search?

5 A I don't know.

6 Q Did you find any?

7 A I did not. But I don't search for them.

8 Q I understand that.

9 A This is a -- there is two different complete
10 roles here, and --

11 Q I understand that.

12 A -- you seem to not be able to understand.

13 Q No, please.

14 A We secure people.

15 MS. SULLIVAN: I'm sorry, Off -- please
16 instruct your client, Ms. Nelson. I'm trying to
17 ask him a question. He's overbearing -- he's over
18 talking me. I'm trying to ask a question, and he's
19 not allowing me to get it out.

20 MS. NELSON: Okay. Wait until --

21 MS. SULLIVAN: I understand very well.

22 MS. NELSON: -- she's done with her
23 question. And then allow him to finish the answer.

24 MS. SULLIVAN: He can finish the answer,
25 but he's not answering the question that I'm asking

1 him.

2 BY MS. SULLIVAN:

3 Q And first, let me just clarify, Lieutenant. I
4 understand there are two roles. I understand there are
5 two teams. I understand there's a SWAT and then the
6 investigators that come in. And I understand that very
7 much. I'm asking you a question about what you
8 personally saw or recovered from the home when you were
9 in there. And then I will go on with the rest of what
10 I'm going to ask you about this. So I'm going back to my
11 question, which is, did you see any weapons, yes or no?

12 A No.

13 Q Did any of the officers who were within the home
14 at the same time as you, to your knowledge, recover or
15 see any weapons, yes or no?

16 A No.

17 Q Okay. Are you aware of whether or not after you
18 left investigators saw or took any weapons from the home?

19 A I'm not aware.

20 Q Okay. All right. And can you please explain to
21 me whether or not the other family members in the home or
22 other individuals who were present at the time of this
23 incident other than the elderly man seemed to be afraid
24 when you kicked him to the ground and when you placed the
25 gun near him?

1 A Can you restate the question?

2 Q Sure. I sure can. We've already talked about
3 the fact that you kicked the elderly gentleman to the
4 ground and that as you survey the area wherever your eyes
5 go that the gun goes. Did you notice or observe whether
6 or not the other individuals in the area, which were
7 family members, seemed to be scared or concerned about
8 the elderly gentleman as this was going on?

9 A I don't believe they were scared or concerned
10 about him. They were scared and concerned from the
11 moment that we went through the door.

12 Q Okay. Do you recall any of them asking for them
13 to be able to take care of the elderly man who was lying
14 on the ground?

15 A No.

16 Q Okay. And were the women in the area ever
17 cuffed?

18 A I don't know.

19 Q But you and your team did not cuff them?

20 A I don't know that, either.

21 Q Okay. Do you know if you cuffed them?

22 A I know I did not.

23 Q Okay. Is it safe to say that had they been
24 cuffed, it would be because there was a threat that was
25 perceived?

1 A This is difficult to answer unless you
2 understand the dynamics of a high risk entry. I'm the
3 team leader and the front part of it. When I see hands
4 and people complying, I pass through. That's left to my
5 trailers on the team. They interpret a threat level
6 there, and they apply handcuffs. That's other members of
7 the team. My mission is to go through and lead all
8 point. My point man and me go through everywhere in the
9 house. Once I pass, I don't see any firearms in the
10 hands, I'm on to the next problem. So what happens after
11 me at the tail end of that snake I have no knowledge.

12 Q Okay. So you don't at all at any point during
13 these entries ever instruct officers to cuff people?

14 A Can you ask that again?

15 Q Yes. Do you ever instruct officers to cuff
16 individuals when you're conducting these entries?

17 A Yes.

18 Q Okay. So it's possible that you may have
19 instructed someone to cuff some of the individuals who
20 are present?

21 A Possible.

22 Q Okay. Were the children cuffed?

23 A I don't believe so.

24 Q Would you cuff children?

25 A That depends on the circumstances.

1 Q So you would cuff a six-month-old child?

2 A No.

3 Q Okay. How old of a child would you cuff?

4 A Upwards of twelve.

5 Q Okay. But you didn't notice any 12-year-old
6 children in this home as you previously testified?

7 A I don't know.

8 Q Okay. Well, you previously --

9 A I previously testified there were ages of four,
10 five, six. I believe there were some older, too. I'm
11 not positive.

12 Q Actually, you said they were younger, and I mean
13 three to four.

14 A Younger, but there was a spread-out age. There
15 was -- I believe there was a teenager in there or
16 something, also. There were several women, several
17 children. And I was in there for only a matter of
18 minutes.

19 Q Okay. All right. But you're saying that if a
20 child was 12 and up, you might cuff them, but someone who
21 is younger than that, you wouldn't cuff?

22 A Again, it still depends on the circumstances, 12
23 and up.

24 Q Okay. I'm just trying to clarify at what point
25 you decide to --

1 A There's no cookie cutter answer for the question
2 you're asking.

3 Q Okay. So you might cuff a two-year-old child,
4 and you might cuff a ten-year-old?

5 A No, I wouldn't cuff a two-year-old.

6 Q All right. So they have to be an older child in
7 order for you to decide to have them cuffed?

8 A Yes.

9 Q Okay. At any point during the incident, did you
10 request and receive consent from any of the individuals
11 to come near them or cause them fear of any kind?

12 A Did I receive request to come towards --

13 Q Did you request --

14 A -- them and cause them fear?

15 Q No. Let me clarify it for you again. I'll say
16 it exactly the way I said it before. Did you request and
17 subsequently receive consent from any of the individuals
18 to come near them and/or cause them apprehension or fear?

19 THE WITNESS: Can you read that back?

20 COURT REPORTER: Sure. "Did you request
21 and subsequently receive consent from any of the
22 individuals to come near them and/or cause them
23 apprehension or fear?"

24 MS. NELSON: I'll object. That's a

25 compound question.

36

1 BY MS. SULLIVAN:

2 Q Okay. Let me break it down for you. I'll break
3 it down for you. At any point while you were in the
4 home, did you request from any of the individuals the
5 right to come near them and cause them fear of any kind?

6 A No.

7 Q All right. And did you -- and then if you
8 didn't request, you obviously did not receive their
9 consent to do that, did you?

10 A No.

11 Q Okay. Did you attend or -- I'm sorry. Strike
12 that.

13 Are you aware of whether or not there were -- or
14 the younger male who was near that elderly male was ever
15 placed on the ground while you were present? I'll say it
16 again.

17 Are you aware of whether the other male -- you
18 mentioned there was another male next to the elderly
19 male. Are you aware of whether he was ever placed on the
20 ground when you were present?

21 A Yes, he was on the ground.

22 Q Okay. Do you know how he got there?

23 A Not specifically.

24 Q So you don't know whether or not he had been

25 ordered to get on the ground or kicked to the ground or

37

1 something else?

2 A I ordered him to the ground.

3 Q All right. But you did not assist him or kick
4 him to the ground?

5 A No.

6 Q Did you talk to this gentleman, the younger
7 gentleman?

8 A No.

9 Q Did you notice him having conversation with any
10 of the officers in the home?

11 A I noticed him yelling and distracting and
12 causing a disturbance there. I didn't notice him having
13 any type of conversation with anybody other than making
14 requests for a search warrant, demanding we leave,
15 continuing on and on and rambling.

16 Q Okay. And do you recall him asking for the
17 field sergeant?

18 A Yes.

19 Q Did anyone ever respond to him when he was
20 asking these questions?

21 A He was ordered to stay down and be quiet
22 numerous times. He wouldn't comply with anything
23 verbally.

24 Q I understand that. I'm asking whether anyone
25 ever responded to any of his questions.

38

1 A I don't know.

2 Q Did you respond?

3 A I think I told him that I was a sergeant in
4 charge of the team, and there would be a sergeant in
5 charge of the house that he could speak with when I left.

6 Q Did you tell him this as soon as he started
7 asking for the field sergeant, or did you wait and tell
8 him later on?

9 A I don't recall. It must have been later,
10 because I didn't have any conversations with anybody, so
11 to speak, until I was certain the whole house was secure
12 and the suspects that were upstairs were cuffed.

13 Q You keep saying suspects.

14 A Two met the same general description.

15 Q Okay. And neither of those individuals,
16 however, were arrested, were they?

17 A I don't know.

18 MS. SULLIVAN: Okay. Nothing further.

19 MS. NELSON: I have one follow-up
20 question.

21 EXAMINATION

22 BY MS. NELSON:

23 Q With respect to the older gentleman, can you

24 describe how much force you used in getting him to the
25 ground?

39

1 A Very minimal.

2 Q Can you elaborate on that?

3 A In my report, it says a poke check and a kick.
4 What that meant was I used a sweep of a gun barrel to
5 push him forward, and then as he was going down and
6 getting back up, I pushed back with my foot.

7 Q And I think you also said that he was not
8 complying with your orders to get down. What was he
9 doing?

10 A He was noncompliant throughout. He demanded
11 that I leave his house. He told me that he's lived there
12 for over 30 years and I had no right to be in there. He
13 was blocking my access to the upstairs, through the
14 kitchen to the downstairs. He was blocking me
15 throughout. He was noncompliant at gunpoint to get on
16 the ground. He demanded that he see paper. He said I
17 was too young to tell him what to do. He said that he
18 was a long-term resident. He's lived there longer than
19 I've been alive and I had no right to come into his house
20 and tell him what to do.

21 Q And as a result of not complying, is that when
22 you used the force you've described?

23 A Yes.

24 MS. NELSON: Okay. Thank you.

25 MS. SULLIVAN: Follow-up.

40

1 EXAMINATION

2 BY MS. SULLIVAN:

3 Q You said that, in talking about the force -- I'm
4 honestly still not clear of the amount of force that you
5 caused to be thrust onto him. You said minimal, but then
6 you said you -- a sweep with the muzzle and then a kick
7 later on. How much force with the kick?

8 A Very little force, minimal. It was a push with
9 my foot rather than a kick.

10 Q Okay. So you stated it wrong in your report
11 then?

12 A In the report, for simplicity that's what we
13 term that.

14 Q You had said that he was standing in the way or
15 blocking --

16 A Yes.

17 Q -- the stairway. And what was your concern
18 about if he was blocking the stairway? What was your
19 concern?

20 A The possibility of our armed robbery suspect
21 being up those stairs with a gun.

22 Q But, in fact, there was no one upstairs with a

23 gun when you got up there?

24 MS. NELSON: Objection, mischaracterizes

25 previous testimony.

41

1 BY MS. SULLIVAN:

2 Q Was there someone upstairs with a gun when you
3 got there?

4 A There was someone upstairs. I did not see a
5 gun.

6 Q Okay.

7 A But I did not do a search.

8 Q You didn't do a search?

9 A I do a visual search of the person. Once I see
10 hands and order down and the hands stay out, I clear and
11 go to the next threat. When it's done, I don't search
12 anywhere.

13 Q Okay. And you saw hands?

14 A My team searches the immediate area where their
15 hands are cuffed around their waistband, anything that's
16 accessible to them. They don't conduct a search.

17 Q Okay.

18 A That's on the team that we're doing the warrant
19 for.

20 Q Okay. Just, please. And you saw hands when you
21 went upstairs then?

22 A Yes.

23 Q Okay. Which signifies compliance with orders?

24 A The two individuals upstairs were completely
25 compliant.

42

1 Q That's what I'm asking about.

2 A Yes.

3 MS. SULLIVAN: Okay. Nothing further.

4 MS. NELSON: Nothing further. We'll read
5 and sign.

6

7 (Deposition concluded at 2:16 p.m.)

8

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1 REPORTER'S CERTIFICATE

2

3 STATE OF MINNESOTA)
) ss.
 4 COUNTY OF HENNEPIN)

5 I hereby certify that I reported the deposition
 of LIEUTENANT ROBERT KROLL, on the 28th day of March,
 6 2007, in Minneapolis, Minnesota, and that the witness
 was by me first duly sworn to tell the whole truth;

7

8 That the testimony was transcribed by me and is
 a true record of the testimony of the witness;

9

10 That the cost of the original has been charged
 to the party who noticed the deposition, and that all
 same parties who ordered copies have been charged at the
 rate for such copies;

11

12 That I am not a relative or employee or
 attorney or counsel of any of the parties, or a relative or
 employee of such attorney or counsel;

13

14 That I am not financially interested in the
 attorneys, action and have no contract with the parties,
 or persons with an interest in the action that affects
 or has a substantial tendency to affect my impartiality;

15

16 That the right to read and sign the deposition
 by the witness was reserved.

17
March, 18 WITNESS MY HAND AND SEAL, this 31st day of
19 2007.

20 _____
21 Lori L. Morrow, RPR, CRR
22 Notary Public, Hennepin County, Minnesota
23 My commission expires: January 31, 2010
24
25

Plain Text Attachment

1

1 STATE OF MINNESOTA DISTRICT COURT
2 COUNTY OF HENNEPIN FOURTH JUDICIAL DISTRICT

3 Charles Everett Cook, Sylvia Mae Cook,
4 and Timothy Blake Cook, natural persons,
5
6 Plaintiffs,
7
8 v.
9
10 City of Minneapolis, a municipal entity; Minneapolis
11 Police Officer Mark Johnson, Badge #003459, in his
12 individual, personal and official capacity; Sgt. D.
13 Smulski, in his individual, personal and official
capacity; Officer K. Blackwell, in his individual,
personal and official capacity; Officer Geoffrey
Toscano, Badge #007257, in his individual, personal and
official capacity; Officer Bevan Blauert, Badge
#003459, in his individual, personal and official
capacity; Officer Jon Petron, Badge #5671, in his
individual, personal and official capacity; Officer
Christopher House, Badge #3165, in his individual,
personal and official capacity; Sgt. Robert Kroll,
Badge #003874, in his individual, personal and official
capacity; Officer Christie Nelson, Badge #4959, in his

14 individual, personal and official capacity; Officer
 15 William Willner, Badge #7783, in his individual,
 16 personal and official capacity; Officer Westlund, Badge
 17 #7674, in his individual, personal and official
 18 capacity; Officer Roger Smith, Badge #006689, in his
 19 individual, personal and official capacity; Officer
 20 Jason King, Badge #003704, in his individual, personal
 and official capacity; Officer Timothy Hanks, Badge
 #002660, in his individual, personal and official
 capacity; and Officers Jane Doe and Richard Roe,
 unknown and unnamed Minneapolis Police Officers, in
 their individual, personal and official capacities;

Defendants.

DEPOSITION OF
 OFFICER BEVAN BLAUERT

Taken March 28, 2007
 Scheduled for 12:15 p.m.

Reported By: Lori Morrow, RPR, CRR
 PARADIGM REPORTING & CAPTIONING INC. (612) 339-0545

2

the 1 Deposition of OFFICER BEVAN BLAUERT, taken on
 28th day of March, 2007, commencing at 12:48 p.m., at
 the 2
 3 CITY OF MINNEAPOLIS ATTORNEY'S OFFICE, 333 South 7th
 4 Street, Suite 300, Minneapolis, Minnesota, before Lori
 5 Morrow, Registered Professional Reporter and Certified
 6 Realtime Reporter and a Notary Public in and for the
 7 State of Minnesota.

8
 9
 APPEARANCES:

10 On Behalf of the Plaintiffs:

11 Maya C. Sullivan, Esquire
 12 LAW OFFICE OF MAYA C. SULLIVAN, L.L.C.

13 941 Hillwind Road NE
Suite 200
14 Minneapolis, Minnesota 55432
(763) 515-0092
Fax (763) 515-0093

15
16 On Behalf of the Defendants:

Tracey L. Nelson, Esquire
17 CITY OF MINNEAPOLIS ATTORNEY'S OFFICE
333 South 7th Street
18 Suite 300
Minneapolis, Minnesota 55402
19 (612) 673-2063

20 *****

21 NOTE: The original transcript will be
delivered
applicable
22 to Maya C. Sullivan, Esquire, pursuant to the
Rules of Civil Procedure.

23
24
25

3

1 INDEX

2 WITNESS:

3 Officer Bevan Blauert

4
5 EXAMINATION BY: PAGE:

6 Ms. Sullivan.....4

7 OBJECTIONS BY:

8 Ms. Nelson.....8

9 EXHIBITS MARKED AND REFERRED TO: (NONE)

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4

1 OFFICER BEVAN BLAUERT,
2 duly sworn, was examined and testified as follows:

3 EXAMINATION

4 BY MS. SULLIVAN:

5 Q Officer Blauert, as I said, my name is Maya
6 Sullivan, and I am one of the attorneys representing the
7 Plaintiffs in this matter. The other one is Albert
8 Goins.

9 Just for the record, can you initially state and
10 spell your name, first and last names.

11 A My first name is Bevan, B-E-V-A-N, and last name
12 Blauert, B-L-A-U-E-R-T.

13 Q Thank you. And have you taken part in
14 depositions in the past?

15 A Yes.

16 Q Okay. I just want to give you a few reminders
17 about procedure while we're here doing the deposition.

18 First, I will ask that when you're responding to
19 questions that you give verbal answers. Don't nod your
20 head or shake your head or say "uh-huh," that type of
21 thing. Please make it clear for the record.

22 And at times your attorney may object or give
23 you different types of instructions regarding answering
24 questions. Please make sure that you wait for her to
25 give you the instructions that may be necessary. Do you

5

1 have any questions at this point?

2 A No.

3 Q Okay. Thank you. Officer Blauert, who is your
4 employer?

5 A City of Minneapolis Police Department.

6 Q All right. How long have you been employed by
7 the Minneapolis Police Department?

8 A Fifteen years.

9 Q And prior to working for the Minneapolis Police

10 Department, were you an officer elsewhere?

11 A No.

12 Q Were you in a different, completely different
13 field?

14 A No.

15 Q You were in the law enforcement field?

16 A No. I was a student.

17 Q Okay. Over the 15 years that you have worked
18 for the Minneapolis Police Department, have your
19 assignments changed?

20 A Yes.

21 Q And what is your current assignment?

22 A The Fifth Precinct.

23 Q All right. And at the time of the incident,
24 which was January 13 of '05, were you assigned to the
25 Fifth Precinct?

6

1 A Yes.

2 Q Okay. Were you assigned to any particular team?

3 A No. I was working the street that day, I
4 believe.

5 Q Okay. Did you receive special training
6 regarding conducting high risk entries?

7 A Yes.

8 Q Okay. And how long ago did you start working
9 with or participating in those type of entries?

10 A I've been doing high risk warrants for
11 approximately 10 years.

12 Q Okay. Have you received any specific training
13 regarding conducting -- excuse me. I have a cold. I
14 apologize -- regarding conducting high risk warrants when
15 there are elderly or ill individuals in the residence or
16 in the home?

17 A We conduct high risk warrants with all ages,
18 shapes, sizes, races. It doesn't matter.

19 Q Okay. I guess what I'm trying to get at is
20 whether or not you would approach a perfectly healthy
21 adult person the same way that you might approach, say,
22 an ill adult that you see or encounter, or an elderly
23 adult who you encounter in these circumstances?

24 A I don't believe we've received any training in
25 specific to age. However, I have done high risk warrants

7

1 with elderly individuals.

2 Q So you said you don't receive training regarding
3 age. But you do have experience. I guess that's what
4 you're saying --

5 A Correct. Everybody is treated the same in a
6 high risk warrant.

7 Q Were you part of the team that entered 3845
8 Second Avenue South in Minneapolis on January 13 of 2005?

9 A Yes.

10 Q And what information were you provided regarding
11 the residence or what you were going to do on that day?

12 A I received very little information. I came in
13 as an extra because they needed more bodies for the
14 warrant. I was with the understanding that we were
15 entering the house with a search warrant or arrest
16 warrant for an individual wanted for robbery who had a
17 history of weapons.

18 Q And did you receive a description of the
19 individual you were looking for?

20 A I did. But I don't recall.

21 Q Can you describe the entry into the home?

22 A I don't recall the exact entry into the home. I
23 don't remember if the door was open or not.

24 Q Okay. Can you describe what happened once you
25 all entered the home?

8

1 A I believe when we entered the home I was
2 probably the last team member through the door. I was
3 presented with a room full of women. I believe they were
4 on a couch, and they already had their hands in the air.

5 Q Did you see any children?

6 A I believe there was at least four women and
7 multiple children.

8 Q Did the children have their hands up?

9 A I don't recall.

10 Q Do you recall the demeanor of the women or the
11 children when you entered?

12 A Repeat. I didn't hear you.

13 Q Sorry. Did you recall the demeanor,
14 D-E-M-E-A-N-O-R. Sorry.

15 A The demeanor? They appeared shocked, which is
16 normal for high risk warrants, because they don't know
17 that we're coming.

18 Q And, in fact, children probably wouldn't have
19 known anything about you coming anyway, whether it was
20 high risk or not, correct?

21 MS. NELSON: Objection, calls for
22 speculation.

23 BY MS. SULLIVAN:

24 Q I just want to clarify. You said they appeared
25 shocked, the children appeared shocked because they

9

1 didn't know you were coming.

2 A Everybody appeared shocked because they didn't
3 know we were coming.

4 Q All right. So you came in, and you saw the
5 women, and you saw the children. Did anyone -- did you
6 hear anyone ask for a search warrant?

7 A After some time, I believe there was somebody

8 that asked for a search warrant.

9 Q Do you recall if that was a woman or a man?

10 A I believe that was an elderly male, but that was
11 some time into the warrant.

12 Q You didn't see the elderly male when you
13 initially entered the home?

14 A I'm having a hard time hearing you. Can you say
15 it again?

16 Q I said you did not see the elderly man when you
17 initially entered the home?

18 A No.

19 Q Okay. At what point did you see him?

20 A That was after the living room area was secured
21 with the women and children. In other words, they
22 appeared to be under control. They were explained just
23 to relax and keep their hands in the air because we were
24 conducting a high risk warrant.

25 Q Okay. And then where did the elderly man come

10

1 from?

2 A I encountered him in, I think it was the
3 staircase area. And I believe what I heard was Officers
4 had encountered him and were encountering difficulty with
5 him.

6 Q Okay. Did you have any kind of interaction with
7 the elderly man?

8 A I don't believe I did, no, not at that point.

9 Q At what point did you have interaction with him?

10 A I believe it was quite some time later. What
11 happened is he was delaying the team during the course of
12 the high risk warrant. It jeopardizes our safety as well
13 as the safety of everybody in the house. He was
14 instructed to get down on the ground and stay down on the
15 ground, which is our routine. He was not complying with
16 those requests. I believe I was then requested by
17 Sergeant Kroll to handcuff this individual so we could
18 continue on with our high risk warrant.

19 Q This is the elderly man that you --

20 A I believe it was, yes. I don't know what his
21 name was.

22 Q And do you recall whether or not the elderly
23 gentleman was at one point made to lie on the ground?

24 A Repeat.

25 Q Do you recall if he at any point during this

11

1 incident was lying on the ground?

2 A Yes, he was lying on the ground when I
3 handcuffed him.

4 Q How did he get to the ground?

5 A I have no idea.

6 Q How close would you say you were to him distance

7 wise, approximately?

8 A When I handcuffed him?

9 Q Uh-huh.

10 A I had to get within touching distance of him.

11 Q Were you kneeling like on your knees, or were
12 you standing up and leaning over to do it?

13 A I was standing when I handcuffed him.

14 Q Okay.

15 A We did so with the utmost care with him, because
16 he appeared not to be a threat to me. Although, like I
17 said, he was impeding our progress in the high risk
18 warrant. I believe he was later charged with
19 obstruction.

20 Q The elderly gentleman?

21 A Correct.

22 Q I think you might have it confused there. But
23 going on, did you notice -- I'm sorry. Strike that.

24 How close was your face to his face when you
25 were cuffing him?

12

1 A I don't recall.

2 Q I'm just trying to visualize the scene. Were
3 you -- when you leaned over to cuff him, or when you lean
4 over to cuff individuals in this type of a seated
5 position or lying position, do you normally get close to
6 their face at all for any reason?

7 A No.

8 Q Okay. Did you notice a stint coming out of the
9 elderly gentleman's neck?

10 A I don't recall, no.

11 Q You said you treated him with the utmost care
12 because he didn't pose a threat. Is that correct?

13 A What I saw what he was doing was he was holding
14 the team up in the execution of a warrant. In that case,
15 he was creating a dangerous situation for us, because we
16 cannot execute our job.

17 Q Okay. But my question is -- I'm just trying to
18 clarify. You said you treated him with the utmost care
19 because he did not pose a threat or didn't appear to pose
20 a threat?

21 A He was not a threat to me.

22 Q Okay. And had he been a threat to you, what
23 would you have done differently?

24 A I would have handcuffed him immediately.

25 Q Was there another male in the area while you

13

1 were purveying the incident?

2 A I don't recall if there was one or two males
3 involved in this. There was a lot going on.

4 Q Okay. Are you one of the officers who went to
5 the upper level or the lower level of the home?

6 A I don't believe I ever left the front room area.

7 Q Okay. You said you heard the elderly gentleman
8 ask for a warrant or ask for the search warrant. At what
9 point was it provided to him or while you were in the
10 home?

11 A During the execution of a high risk warrant, we
12 do not provide a search warrant. We advise them to get
13 down, and then the search warrant is usually provided by
14 the investigators after the apartment has been secured.

15 Q So did you advise the Plaintiffs in this matter
16 that they would receive a search warrant, be able to view
17 the search warrant later?

18 A I didn't advise anybody anything other --

19 Q Okay. So --

20 A -- than to get down and be quiet.

21 Q Okay. So when they were asking for the search
22 warrant, there was no response basically?

23 A Not from myself.

24 Q Okay. Did you hear a response?

25 A I don't recall.

14

1 Q Do you normally respond if someone were to ask
2 for a search warrant during this type of an entry?

3 A On the hundreds that I've done, usually not.

4 Q Usually you don't respond at all?

5 A Usually we tell them there will be one coming.

6 Q Okay.

7 A And it will be all explained to you after
8 everything is safe.

9 Q Okay. But in this particular case, you nor
10 anyone else told them that there was a warrant coming?

11 A I don't recall.

12 Q Okay. You said that you didn't tell them, so
13 let's just break the question down into two. During this
14 particular incident, you did not tell them a warrant was
15 coming, did you?

16 A I did not, no.

17 Q Okay. And you don't recall whether or not
18 anybody else told them that one was on its way?

19 A That's correct.

20 Q Okay. As a result of this incident, are you
21 aware of whether the robbery suspect was arrested?

22 A I believe he was apprehended, correct.

23 Q Did you see him?

24 A I don't recall.

25 Q Do you know if anyone else was arrested as a

15

1 result of the incident?

2 A Like I stated earlier, I believe it was an
3 elderly gentleman, but I don't have any names or anything
4 like that.

5 Q I'm not asking for a name. I'm just asking if
6 you know of anybody else who was. At the point that you
7 entered the residence, where were you in the succession
8 of officers coming in? Were you first, were you last,
9 were you in the middle somewhere?

10 A As stated earlier, I was probably the last
11 person into the room, into the residence.

12 Q Did you have the ram?

13 A I believe I was assigned to the ram, correct.

14 Q Okay. Do you remember who you were assigned to
15 that with?

16 A No.

17 Q In your supplemental report, you indicate that
18 there was an uncooperative male. Was it your opinion
19 that he was uncooperative because he was asking for the
20 field sergeant and the search warrant or some other
21 reason?

22 A The reason he was uncooperative was he was not
23 complying with our requests to lie down on the ground and
24 was impeding the process of which we were conducting a
25 high risk warrant, was not complying with verbal

16

1 commands, therefore being uncooperative.

2 Q At the time you were conducting or participating
3 in the entry, did you ever go into the kitchen area of
4 the home?

5 A I don't believe so.

6 Q Do you recall the weather that day?

7 A No.

8 Q Do you think it would be safe to assume that it
9 was cold since it was January in Minnesota?

10 A I don't recall.

11 Q Okay. I just want to get an understanding about
12 something here. You said that you did know that the
13 elderly gentleman was lying on the ground or had been
14 placed on the ground, and you believe that you cuffed
15 him. At the time he was lying on the ground, do you
16 recall anyone asking for a blanket to cover him up
17 because of the cold air coming in?

18 A I don't recall. It was inside. I wouldn't
19 believe that would be something that would happen.

20 Q Is that something you believe would happen if
21 the door was standing wide open?

22 A That's speculation. I don't think so, no.

23 Q I'm sorry. You don't think that if the door was
24 standing wide open someone may ask for a blanket?

25 A During the conduction of a high risk warrant,

17

1 we're not interested in if people are cold or warm.

2 Q And that's even if you have an ill person who
3 may be increasingly becoming more ill because of the cold

4 air?

5 A Most high risk warrants from the time that we
6 enter to the time that we are exiting the house is less
7 than two minutes. So in the two minutes that I contact
8 the people that are inside the house, I don't care if
9 they're warm or cold.

10 Q Okay. And you said you don't recall whether or
11 not anyone indicated they were cold or not?

12 A I don't recall, no.

13 Q Okay. All right. Do you know if anybody else
14 noticed whether there was a stint in the older man's neck
15 or not?

16 A I don't recall.

17 Q You state in your supplemental report that when
18 you entered the home that you were yelling loudly "police
19 search warrant." Were you the only one yelling that?

20 A That's usually common procedure. If I put that
21 in a report, it would be a correct reflection of what I
22 did.

23 Q I'm asking whether or not you were the only one
24 who was doing that or not.

25 A I don't recall.

18

1 Q Are you normally the only one who yells it?

2 A Normally, more than one officer is yelling it as
3 we are breaching the door for our safety.

4 Q Okay. Is it normal for all of the officers to
5 yell it?

6 A I don't know if I can answer that or not.
7 Sometimes it happens, sometimes it doesn't, as long as
8 the announcement is made.

9 Q Okay. You've conducted several hundred of these
10 types of entries, I believe you said earlier. Is that
11 correct?

12 A Correct.

13 Q Would you say like 500, closer to a thousand?
14 Just could you give me a ballpark figure?

15 A Can you rephrase? I'm not sure what you're
16 asking.

17 Q I said have you conducted 500, closer to a
18 thousand of these types of high risk entries? Can you
19 give me a ballpark figure?

20 A I would say over 200.

21 Q All right. And on these high risk entries that
22 you've conducted, how many, approximately again, I don't
23 need an exact number, have you conducted along with
24 Sergeant Kroll?

25 A Probably 50. I'm not sure.

19

1 MS. SULLIVAN: Okay. That's fine. I
2 don't have any more questions.

3 MS. NELSON: We'll read and sign.

4

5 (Deposition concluded at 1:08 p.m.)

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1 REPORTER'S CERTIFICATE

2

3 STATE OF MINNESOTA)
) ss.
 4 COUNTY OF HENNEPIN)

5 I hereby certify that I reported the deposition
 of OFFICER BEVAN BLAUERT, on the 28th day of March,
 2007,
 6 in Minneapolis, Minnesota, and that the witness was by
 me
 7 first duly sworn to tell the whole truth;

8 That the testimony was transcribed by me and is
 a
 8 true record of the testimony of the witness;

9 That the cost of the original has been charged
 to
 10 the party who noticed the deposition, and that all
 same
 11 parties who ordered copies have been charged at the
 rate for such copies;

12 That I am not a relative or employee or
 attorney
 12 or counsel of any of the parties, or a relative or
 employee of such attorney or counsel;

13 That I am not financially interested in the
 14 action and have no contract with the parties,
 attorneys,
 or
 15 or persons with an interest in the action that affects
 has a substantial tendency to affect my impartiality;

16 That the right to read and sign the deposition
 by
 17 the witness was reserved.

18 WITNESS MY HAND AND SEAL, this 31st day of
 March,
 18 2007.

19
 20 _____
 Lori L. Morrow, RPR, CRR
 Notary Public, Hennepin County, Minnesota
 21 My commission expires: January 31, 2010

22
 23
 24
 25

Plain Text Attachment

1

1 STATE OF MINNESOTA DISTRICT COURT
2 COUNTY OF HENNEPIN FOURTH JUDICIAL DISTRICT

3 Charles Everett Cook, Sylvia Mae Cook,
and Timothy Blake Cook, natural persons,
4
Plaintiffs,
5
v.
6
City of Minneapolis, a municipal entity; Minneapolis
7 Police Officer Mark Johnson, Badge #003459, in his
individual, personal and official capacity; Sgt. D.
8 Smulski, in his individual, personal and official
capacity; Officer K. Blackwell, in his individual,
9 personal and official capacity; Officer Geoffrey
Toscano, Badge #007257, in his individual, personal and
10 official capacity; Officer Bevan Blauert, Badge
#003459, in his individual, personal and official
11 capacity; Officer Jon Petron, Badge #5671, in his
individual, personal and official capacity; Officer
12 Christopher House, Badge #3165, in his individual,
personal and official capacity; Sgt. Robert Kroll,
13 Badge #003874, in his individual, personal and official
capacity; Officer Christie Nelson, Badge #4959, in his
14 individual, personal and official capacity; Officer
William Willner, Badge #7783, in his individual,
15 personal and official capacity; Officer Westlund, Badge
#7674, in his individual, personal and official
16 capacity; Officer Roger Smith, Badge #006689, in his
individual, personal and official capacity; Officer
17 Jason King, Badge #003704, in his individual, personal
and official capacity; Officer Timothy Hanks, Badge
18 #002660, in his individual, personal and official
capacity; and Officers Jane Doe and Richard Roe,
19 unknown and unnamed Minneapolis Police Officers, in
their individual, personal and official capacities;
20
Defendants.
21 *****
22
23 DEPOSITION OF
OFFICER ROGER SMITH
Taken March 28, 2007

Scheduled for 10:30 a.m.

24

Reported By: Lori Morrow, RPR, CRR

25 PARADIGM REPORTING & CAPTIONING INC. (612) 339-0545

2

1 Deposition of OFFICER ROGER SMITH, taken on the
2 28th day of March, 2007, commencing at 10:30 a.m., at
the
3 CITY OF MINNEAPOLIS ATTORNEY'S OFFICE, 333 South 7th
4 Street, Suite 300, Minneapolis, Minnesota, before Lori
5 Morrow, Registered Professional Reporter and Certified
6 Realtime Reporter and a Notary Public in and for the
7 State of Minnesota.

8

9

APPEARANCES:

10

On Behalf of the Plaintiffs:

11

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12 LAW OFFICE OF MAYA C. SULLIVAN, L.L.C.
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14 (763) 515-0092
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15

On Behalf of the Defendants:

16

Tracey L. Nelson, Esquire
17 CITY OF MINNEAPOLIS ATTORNEY'S OFFICE
333 South 7th Street
18 Suite 300
Minneapolis, Minnesota 55402
19 (612) 673-2063

20

21 NOTE: The original transcript will be
delivered
to Maya C. Sullivan, Esquire, pursuant to the

applicable

22 Rules of Civil Procedure.

23

24

25

3

1 INDEX

2 WITNESS:

3 Officer Roger Smith

4

EXAMINATION BY: PAGE:

5

Ms. Sullivan.....4

6

7 OBJECTIONS BY:

8

Ms. Nelson.....7, 8, 9, 16

9

EXHIBITS MARKED AND REFERRED TO: PAGE:

10

Exh. No. 1:

11

CAPRS report 1/19-20/2005

12

Roger Smith

11

13

14

(REPORTER'S NOTE: Original Exhibit is
attached to the original transcript.)

15

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1 OFFICER ROGER SMITH,
2 duly sworn, was examined and testified as follows:

3 EXAMINATION

4 BY MS. SULLIVAN:

5 Q Officer Smith, I'm Maya Sullivan, as I said, and
6 I'm one of the attorneys for the Plaintiffs in this
7 matter, the Cooks. Albert Goins is the other attorney,
8 and you may have met him in the past.

9 First of all, I just want to talk about a few
10 things that you just need to keep in mind while we're
11 going through the depositions. Have you been through
12 depositions before?

13 A I have just through the city.

14 Q So you are somewhat familiar with the process
15 and the procedure?

16 A A little, yeah.

17 Q Basically, I'll just be asking you questions,
18 and I just want you to give a frank response, an honest
19 response. You were sworn in, so you are under oath,
20 everything that you say.

21 It's possible that your attorney may object to
22 some things that are being asked, and, if so, just wait
23 for your attorney's instructions on that.

24 Make sure that you are giving verbal responses
25 and not nodding or shaking your head or "uh-huh" or that

5

1 type of thing.

2 A Okay.

3 Q "Yes" or "no" is what we need or whatever the
4 answer is.

5 And that's pretty much all I have right now. Do
6 you have any questions before we get started?

7 A No.

8 Q Okay. Officer, could you please state and spell
9 your name for the record?

10 A Sure. It's Roger Dean Smith. It's R-O-G-E-R,
11 last name Smith, S-M-I-T-H.

12 Q Okay. And who is your employer?

13 A City of Minneapolis.

14 Q What specific department?

15 A I work for the STOP or SWAT Division right now.

16 Q Okay. Of the Minneapolis Police Department?

17 A Yes.

18 Q Okay. And how long have you been employed with
19 Minneapolis Police Department?

20 A Since September of 1993. So I'm in my 14th
21 year.

22 Q Okay. And how long -- or I'm sorry. How long
23 have you been a police officer?

24 A For that amount of time.

25 Q Okay. What did you do prior to being a police

6

1 officer for the City of Minneapolis?

2 A I was a manager for a convenience store.

3 Q Okay. Have your job assignments with the
4 Minneapolis Police Department stayed the same over the
5 years, or have they changed?

6 A Pretty much stayed the same.

7 Q And so you've been on the SWAT team then for the
8 entire time?

9 A I've been on the SWAT team for six, seven years.

10 Q Okay. And what does that mean? What is the
11 SWAT team?

12 A SWAT team basically does callouts for
13 operations, you know, of somebody that's held up with
14 guns. We also do entries for other cities that are
15 looking for criminals within the city.

16 Q Okay. And what does an entry entail?

17 A An entry? An entry would entail a sergeant to
18 do a recon of the address, of the house and then
19 basically getting all the information about the house and

20 then relaying that to the officers that are going to be
21 doing the entry.

22 Q And are SWAT officers -- or excuse me. Do SWAT
23 officers receive specialized training to participate in
24 that type of work?

25 A Yes.

7

1 Q Okay. And what type of training is that, and
2 how long does it last, I guess?

3 A You know, it's ongoing training throughout. I
4 mean, every year, you go through --

5 Q Continuing education?

6 A -- training, yeah.

7 Q How many times prior to this case have you been
8 a named defendant in a lawsuit involving the Minneapolis
9 Police Department in which so and so rights have been
10 alleged to have been violated?

11 MS. NELSON: I'll object as relevant --
12 irrelevant, not relevant.

13 You can answer.

14 THE WITNESS: You know, maybe one or two
15 possibly, that I can recall.

16 BY MS. SULLIVAN:

17 Q Do you at all recall the circumstances of those
18 particular cases?

19 MS. NELSON: Same objection.

20 You can answer.

21 BY MS. SULLIVAN:

22 Q Were they similar in terms of the type of
23 entry --

24 A No.

25 Q -- that you had here in this case?

8

1 A No.

2 Q Okay. How many internal affairs complaints have
3 been filed against you?

4 MS. NELSON: Same objection.

5 You can answer.

6 THE WITNESS: None that I know of.

7 BY MS. SULLIVAN:

8 Q And how many high risk entry warrants do you
9 think, just approximately, that you may have assisted on
10 or been part of over the six or seven years you've been
11 on the SWAT team?

12 A Probably 250 to 300.

13 Q Do you receive any specialized training
14 regarding dealing with elderly, ill, or young children
15 when exercising a high risk or other type of warrant?

16 A No.

17 Q In your participation in these type of warrants
18 then, is it safe to say that you don't deal with or

19 behave differently toward elderly, young, or ill people?

20 MS. NELSON: Objection, mischaracterizes
21 previous testimony.

22 MS. SULLIVAN: Okay. Do you want me to
23 rephrase it, or do you want him to answer the
24 question?

25 MS. NELSON: If you understand the

9

1 question, you can answer it. If you need her to
2 clarify it, then please ask her to.

3 BY MS. SULLIVAN:

4 Q I can clarify it for you.

5 A Yeah, clarify it.

6 Q No problem. My question was, first, do you
7 receive any specialized training in doing these type of
8 warrants with specifically elderly, ill, or young
9 children. I can break that up for you if that's easier.
10 Do you handle high risk warrants -- or high risk entries,
11 I'm sorry, the same as with a normal adult that you would
12 if you saw someone who was ill or elderly when you
13 entered the home?

14 MS. NELSON: I'll object as vague, too, as
15 in what specific --

16 MS. SULLIVAN: I asked about his behavior
17 and how he dealt with those individuals initially.

18 MS. NELSON: Okay.

19 THE WITNESS: You know, it's a pretty much
20 common sense deal, you know, you -- just like you
21 would in a squad. I mean, it's -- you see what you
22 see, and you deal with it as it comes.

23 BY MS. SULLIVAN:

24 Q Okay. So but I'm still trying to get an
25 understanding of what is different about how you would

10

1 deal with an ill person if you encountered them on a high
2 risk entry warrant.

3 A I mean, without getting into specifics, I mean,
4 if somebody is in a wheelchair, you deal with that
5 differently, you know.

6 Q And what do you mean by differently, though? I
7 mean, do you --

8 A Well, you still want to see hands, but that
9 person might not be able to show you their hands, you
10 know, if they're in a wheelchair. So you still -- I
11 mean, people can hide stuff in wheelchairs and hide their
12 hands and all kinds of things, so.

13 Q Okay. But the bottom line is that you take
14 their condition under consideration. Is that accurate?

15 A Yeah.

16 Q Okay. And when you're dealing with young
17 children or infants, would the same be the case?

18 A Yes.

19 Q Okay. I just want to turn your attention to the
20 incident for which we're here talking about. Were you
21 part of the team that entered the home located at 3845
22 Second Avenue South in Minneapolis, Minnesota?

23 A Yes, I was.

24 Q I'm sorry. And that was on January 13, 2005?

25 A Yes.

11

1 Q Okay. And what information were you provided
2 with during the briefing?

3 A Just the briefing that -- I mean, I guess I
4 can't recall exactly what was said. But we're briefed
5 about the whole entire house and who the suspects are
6 that we're looking for.

7 Q Okay. So you believe that there were more than
8 one -- there was more than one suspect?

9 A That I -- I mean, that I can recall, yes.

10 Q Do you have your police report with you?

11 A No, I don't.

12 Q Okay. Would you like to take a look at it to
13 refresh your memory just to give me a better
14 understanding of how you were briefed?

15 A Sure.

16 MS. NELSON: Are you going to mark that as

17 an exhibit?

18 MS. SULLIVAN: We can, yes.

19 (Deposition Exhibit Number 1

20 was marked for identification and is

21 attached herewith.)

22 BY MS. SULLIVAN:

23 Q If you could just glance over that, Officer

24 Smith, and just if that hopefully refreshes your memory

25 about how you were briefed prior to going into this

12

1 entry, and just could you explain how you were briefed

2 and what information you were given?

3 A Well, basically, we were briefed. Basically, my

4 whole first paragraph says, you know, that we're looking

5 for an armed suspect from a robbery and that I was going

6 to be assigned to the 12th -- or to the ram team.

7 Q Okay. All right. Does that refresh your memory

8 sufficiently?

9 A Yeah.

10 Q All right. Okay. Thank you. And so the

11 information you were given didn't include a description

12 of the individual?

13 A Not that I recall.

14 Q Did you receive the person's age, any

15 identifying information regarding this individual?

16 A Not that I recall. I thought I put it in the

17 report, but.

18 Q How were you to know you were encountering the
19 alleged suspect if you didn't have any identifying
20 information about him?

21 A Basically, when we go into a warrant, we secure
22 everybody that's in there. And once we secure everybody
23 and make sure that they don't have weapons on them, then
24 the investigators come in after that.

25 Q Okay. All right. I want to turn your attention

13

1 more back to the details of the entry. Where were you in
2 the line in terms of were you first, second coming into
3 the home?

4 A Going into the home, you mean after -- we were
5 going to go up to hit the door with the ram, but the door
6 was open, so.

7 Q It was unlocked you mean?

8 A Right.

9 Q Okay.

10 A Unlocked. So I took the ram, set it down on the
11 porch, and then we entered -- we're basically one of the
12 last two to enter, the two ram guys are, after everybody
13 else does, so.

14 Q Okay. So you were one of the last people to
15 enter the house at that time --

16 A Yeah.

17 Q -- on the SWAT team? At the time that you
18 entered, do you recall what you observed when you walked
19 into the home?

20 A A lot of screaming, kids yelling.

21 Q How many kids do you recall?

22 A I couldn't tell you for sure.

23 Q Okay. Do you have an estimate? I mean, it was
24 more than one for sure --

25 A For sure, yeah.

14

1 Q -- I'm assuming, since you say kids?

2 A Yeah.

3 Q Do you think it was more than two?

4 A It was probably five maybe.

5 Q Maybe five? Okay. Do you recall their ages?

6 A No.

7 Q Do you recall if any of them were infants?

8 A I don't believe so.

9 Q As a result of the incident, are you aware of
10 whether the robber suspect was actually arrested?

11 A I'm unaware.

12 Q Do you know if anybody was arrested as a result
13 of the incident?

14 A No.

15 Q No, nobody was arrested, or no, you don't know?

16 A No, I don't know if anybody was.

17 Q All right. I have a couple more questions. In
18 your supplemental police report, you indicated that the
19 adult women that you initially encountered were screaming
20 frantically and asking for a search warrant. Was a
21 search warrant shown to them at any point, to your
22 knowledge?

23 A Not that I know of.

24 Q Why not?

25 A We don't carry -- we don't carry the search

15

1 warrant with us.

2 Q Did they ask about the search warrant or the
3 field sergeant, or did you hear them ask about the search
4 warrant or the field sergeant?

5 A When we were securing people, yeah.

6 Q And what was your response?

7 A I don't know if I even responded. I can't
8 recall.

9 Q Do you normally respond if someone asks for a
10 search warrant or a --

11 A If they would ask me personally, yeah.

12 Q You say in your report that the older male that
13 you encountered had to be forced to the ground. Who
14 forced him to the ground?

15 A You know, with everybody that was there, I, you
16 know, I can't recall for sure who would have put him to
17 the ground. I think I might have assisted. I can't
18 recall who else might have done it.

19 Q Did you notice if the older gentleman may have
20 appeared ill?

21 A He didn't appear to me to be, you know, ill.

22 Q He appeared older or elderly, though?

23 A Older, yeah.

24 Q Did you notice the stint in his neck?

25 A No.

16

1 Q Did you notice how long he was on the ground?

2 A No, I don't know.

3 Q Would you say it was a significant period of
4 time?

5 MS. NELSON: Objection, vague.

6 THE WITNESS: No.

7 BY MS. SULLIVAN:

8 Q No, it was not?

9 A No.

10 Q Do you recall what the weather was like on that
11 day, Officer Smith?

12 A No, I don't.

13 Q It was January in Minnesota, so you probably
14 could guess it was cold, you're just not sure exactly?

15 A Right.

16 Q Would you normally leave someone who was ill or
17 elderly in front of an open doorway in extreme or cold
18 temperatures while securing a warrant or high risk
19 warrant?

20 A Well, we're -- I mean, we're certainly not going
21 to look behind us to see what we left open. You
22 understand, because then you're taking your eyes off --

23 Q I understand that.

24 A So no.

25 Q No, you would not normally leave them --

17

1 A No.

2 MS. NELSON: Wait.

3 THE WITNESS: Repeat that question.

4 BY MS. SULLIVAN:

5 Q Would you normally leave an elderly or ill
6 person in front of an open doorway --

7 A No.

8 Q -- in cold temperatures or in frigid
9 temperatures?

10 A No.

11 Q But in this case, the elderly gentleman was left
12 in front of the doorway. Can you give me any kind of
13 explanation or give me an understanding of why that

14 happened?

15 A I have no answer. I mean --

16 Q Okay. And you said you don't normally look
17 behind you because you don't want to take your eyes off
18 of what's going on. And that's understandable. But what
19 if the person is bringing to your attention that the door
20 is open, and they are ill or cold and that type of thing.

21 A Just depends if they're secure or not, I mean,
22 if the whole area is under control.

23 Q If the individual is secure or the entire
24 residence is secure?

25 A Basically, everybody that's -- everybody that's

18

1 in the room, that's in the house.

2 Q Do you recall whether you thought or felt that
3 the women and children in the living room area when you
4 first encountered them, whether they presented any kind
5 of threat to you or any of the officers?

6 A I don't recall if they were a threat or
7 anything. I mean, the other officers went, you know,
8 completely past them. But they were, you know -- I mean,
9 it's pretty hard to, you know, think of what a threat
10 could be, because once you let your guard down on
11 something like that, that's when something terrible
12 happens.

13 Q That's understandable. I guess what I'm trying

14 to understand, though, is do you recall handcuffing any
15 of the women or children who were in the area?

16 A No.

17 Q And do you normally in a high risk situation
18 cuff individuals who seem to be presenting some sort of
19 threat to you?

20 A Not right away.

21 Q But you do cuff them at some point?

22 A (Nods head.)

23 Q All right. But you don't recall cuffing the
24 women and children at all --

25 A No.

19

1 Q -- during the encounter? So would it be safe to
2 say that you did not feel that they presented any kind of
3 a threat to you or to any of the other officers?

4 A I wouldn't say that.

5 Q Well, then please explain why you wouldn't cuff
6 them at any point.

7 A We would as a team cuff them. But they are just
8 going to be secured at gunpoint, you know, not direct
9 gunpoint. I'm not going to be pointing my gun directly
10 at you, but I might have it at a ready position just in
11 case a gun was presented.

12 Q Okay. I'm just trying to again understand here.

13 So are you saying that in lieu of cuffing them, you would
14 gun check them? Is that what you're saying?

15 A Somebody would check them and then handcuff
16 them, or, you know, I don't know if the investigators
17 came in. I couldn't tell you. I mean, I can't recall
18 two years ago what happened exactly at that residence.
19 But, basically, that's typically -- and one person or two
20 persons that are assigned to the team usually go and cuff
21 people while everybody else is securing and so -- until
22 they're cuffed.

23 Q Okay. So if someone wasn't cuffed, then the
24 exception would be that the area was secure, and those
25 individuals didn't pose a threat then. I'm just trying

20

1 to get an understanding.

2 A If somebody was not cuffed?

3 Q Right. If they were never cuffed, and you had
4 been through, you had looked around, done whatever you
5 had to do while you were in there, the assumption then
6 would be that they did not pose a threat?

7 A I would say that that's up to the investigators.
8 So that's not even on our --

9 Q Okay. I'm asking you as a SWAT team member,
10 would the assumption be since you did not cuff that
11 individual, and you're the individuals who are going in
12 first doing the surveying and clearing of the area, would

13 the assumption be that there was no threat that was being
14 posed by those individuals?

15 A Still, I guess, I mean, you're going to have to
16 rephrase it differently.

17 Q Well, okay. Let me just --

18 A I would see them as a threat until they're
19 searched and until the area is searched around them.

20 Q Okay. And do you normally search the area and
21 search the individuals fairly soon as you --

22 A We search the individuals, and then the
23 investigators search the area.

24 Q Okay. Let me finish my question. My question
25 was, do you normally search the area upon entering into

21

1 the residence or upon entering into the building?

2 A No.

3 Q Okay. At what point would you have searched the
4 area?

5 A We wouldn't. The SWAT team wouldn't.

6 Q Okay. Excuse me. I thought you just said that
7 you searched the area, and the investigators searched the
8 individuals.

9 A Switch that around.

10 Q The other way around?

11 A Yeah.

12 Q Okay. So at what point would you search the
13 individuals? Immediately upon entering into the house or
14 sometime later?

15 A Once they're secure.

16 Q Do you know if anyone, any of the other officers
17 involved or yourself, attended a hearing relating to this
18 particular incident involving one of the Plaintiffs?

19 A I don't know. I don't know if anybody did.

20 Q Did you?

21 A No.

22 Q Okay. And let me just clarify. When I say
23 hearing, I mean a criminal hearing regarding a disorderly
24 conduct matter that the individual was charged with as a
25 result of this incident. And you're saying you did not

22

1 attend that hearing?

2 A I did not.

3 Q And you don't recall whether or not or you don't
4 know whether any of the other officers involved attended?

5 A I don't know.

6 MS. SULLIVAN: Okay. I don't have
7 anything else for you right now.

8 MS. NELSON: I don't have anything. We'll
9 read and sign.

10

11 (Deposition concluded at 10:55 a.m.)

12

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1

REPORTER'S CERTIFICATE

2

3

STATE OF MINNESOTA)

) ss.

4

COUNTY OF HENNEPIN)

5

I hereby certify that I reported the deposition
of OFFICER ROGER SMITH, on the 28th day of March, 2007,
in Minneapolis, Minnesota, and that the witness was by

me

7

first duly sworn to tell the whole truth;

a

8

That the testimony was transcribed by me and is
true record of the testimony of the witness;

9

That the cost of the original has been charged

to

10 the party who noticed the deposition, and that all
same 10 parties who ordered copies have been charged at the
rate for such copies;
11
attorney 11 That I am not a relative or employee or
12 or counsel of any of the parties, or a relative or
employee of such attorney or counsel;
13
attorneys, 13 That I am not financially interested in the
14 action and have no contract with the parties,
or 14 or persons with an interest in the action that affects
15 has a substantial tendency to affect my impartiality;
16
by 16 That the right to read and sign the deposition
the witness was reserved.
17
March, 17 WITNESS MY HAND AND SEAL, this 31st day of
18 2007.
19
20 _____
Lori L. Morrow, RPR, CRR
Notary Public, Hennepin County, Minnesota
21 My commission expires: January 31, 2010
22
23
24
25

Plain Text Attachment

1

1 STATE OF MINNESOTA DISTRICT COURT
2 COUNTY OF HENNEPIN FOURTH JUDICIAL DISTRICT

3 Charles Everett Cook, Sylvia Mae Cook,
and Timothy Blake Cook, natural persons,

4

Plaintiffs,

5

v.

6

City of Minneapolis, a municipal entity; Minneapolis
Police Officer Mark Johnson, Badge #003459, in his
individual, personal and official capacity; Sgt. D.
Smulski, in his individual, personal and official
capacity; Officer K. Blackwell, in his individual,
personal and official capacity; Officer Geoffrey
Toscano, Badge #007257, in his individual, personal and
official capacity; Officer Bevan Blauert, Badge
#003459, in his individual, personal and official
capacity; Officer Jon Petron, Badge #5671, in his
individual, personal and official capacity; Officer
Christopher House, Badge #3165, in his individual,
personal and official capacity; Sgt. Robert Kroll,
Badge #003874, in his individual, personal and official
capacity; Officer Christie Nelson, Badge #4959, in his
individual, personal and official capacity; Officer
William Willner, Badge #7783, in his individual,
personal and official capacity; Officer Westlund, Badge
#7674, in his individual, personal and official
capacity; Officer Roger Smith, Badge #006689, in his
individual, personal and official capacity; Officer
Jason King, Badge #003704, in his individual, personal
and official capacity; Officer Timothy Hanks, Badge
#002660, in his individual, personal and official
capacity; and Officers Jane Doe and Richard Roe,
unknown and unnamed Minneapolis Police Officers, in
their individual, personal and official capacities;

20

Defendants.

21

DEPOSITION OF
OFFICER TIMOTHY HANKS

22

23

Taken March 28, 2007
Scheduled for 11:30 a.m.

24

25

Reported By: Lori Morrow, RPR, CRR
PARADIGM REPORTING & CAPTIONING INC. (612) 339-0545

2

the

1

Deposition of OFFICER TIMOTHY HANKS, taken on

2

the

28th day of March, 2007, commencing at 11:22 a.m., at

3 CITY OF MINNEAPOLIS ATTORNEY'S OFFICE, 333 South 7th
4 Street, Suite 300, Minneapolis, Minnesota, before Lori
5 Morrow, Registered Professional Reporter and Certified
6 Realtime Reporter and a Notary Public in and for the
7 State of Minnesota.

8

9

APPEARANCES:

10

On Behalf of the Plaintiffs:

11

Maya C. Sullivan, Esquire
12 LAW OFFICE OF MAYA C. SULLIVAN, L.L.C.
941 Hillwind Road NE
13 Suite 200
Minneapolis, Minnesota 55432
14 (763) 515-0092
Fax (763) 515-0093

15

On Behalf of the Defendants:

16

Tracey L. Nelson, Esquire
17 CITY OF MINNEAPOLIS ATTORNEY'S OFFICE
333 South 7th Street
18 Suite 300
Minneapolis, Minnesota 55402
19 (612) 673-2063

20

21 NOTE: The original transcript will be
delivered
22 to Maya C. Sullivan, Esquire, pursuant to the
applicable
23 Rules of Civil Procedure.
24
25

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INDEX

WITNESS:

Officer Timothy Hanks

EXAMINATION BY:

PAGE:

Ms. Sullivan.....4

OBJECTIONS BY:

Ms. Nelson.....6, 17

EXHIBITS MARKED AND REFERRED TO:

(NONE)

1 OFFICER TIMOTHY HANKS,
2 duly sworn, was examined and testified as follows:

3 EXAMINATION

4 BY MS. SULLIVAN:

5 Q Officer Hanks, my name is Maya Sullivan, as I
6 said, and I'm one of the attorneys for the Plaintiffs in
7 this matter. The other one is Albert Goins, who you may
8 or may not know.

9 I just want to give you a few just introductory
10 pieces of information before we get started. First of
11 all, have you ever taken part in a deposition?

12 A Yes.

13 Q Okay. So you are kind of familiar with the
14 procedure and what goes on in a deposition then?

15 A Yes.

16 Q Okay. Just a couple of things. I will be
17 asking you questions. Your attorney may follow up with
18 cross-examination. She may also object. If she does,
19 please just follow her instructions regarding whether you
20 should respond or answer the question.

21 I do need you to give verbal answers and not
22 nodding or "uh-huh" and that type of a thing.

23 Do you have any questions before we get started?

24 A No.

25 Q Okay. Officer, can you please state and spell

1 your name for the record?

2 A Timothy, T-I-M-O-T-H-Y, Hanks, H-A-N-K-S.

3 Q Thank you. And who is your employer?

4 A City of Minneapolis.

5 Q Okay. And what department?

6 A Police.

7 Q And how long have you been employed by the
8 Minneapolis Police Department?

9 A Since 1993.

10 Q Okay. And during that time as an officer with
11 the Minneapolis Police Department, have your assignments
12 changed over the years?

13 A Yes.

14 Q Okay. And what is your current assignment?

15 A I'm assigned to the STOP unit.

16 Q Okay. And was your assignment to the STOP unit
17 on the day of this incident, which was January 13, 2005?

18 A I don't remember.

19 Q Do you recall approximately how long you've been
20 with the STOP unit?

21 A Since its inception. So I think it's been two
22 years now. So I think that might have been right around
23 that area when we were transitioning.

24 Q Okay. And by whom were you employed before the
25 Minneapolis Police Department? Or were you a police

1 officer prior --

2 A Before? No.

3 Q Okay. So this was your first police position?

4 A Yes.

5 Q Okay. What field did you work in before?

6 A I was a personal trainer.

7 Q Okay. How many times prior to this case have
8 you been named as a defendant in a lawsuit involving the
9 police department violating someone's civil rights?

10 MS. NELSON: I'll object as irrelevant.

11 You can answer.

12 THE WITNESS: One.

13 BY MS. SULLIVAN:

14 Q Do you recall whether any internal affairs
15 complaints have been filed against you?

16 MS. NELSON: Same objection.

17 Go ahead and answer.

18 THE WITNESS: No.

19 BY MS. SULLIVAN:

20 Q You don't recall, or there haven't been any?

21 A There haven't been any.

22 Q Okay. Have you received special training in
23 conducting high risk entry warrants?

24 A Yes.

25 Q Okay. And in that training, do you all receive

7

1 any kind of distinct trainings regarding handling or
2 dealing with the elderly or ill individuals who you may
3 encounter on those warrants or on those entries?

4 A No.

5 Q You do not?

6 A No.

7 Q Okay. How do you normally handle the elderly or
8 ill individuals when you encounter them as opposed to a
9 perfectly healthy adult in that type of an entry?

10 A I guess it's discretionary. You know, you use
11 your own discretion.

12 Q And what does that mean, that if you use your
13 discretion, you may treat them less aggressively, or what
14 does that mean?

15 A If they pose a threat, I use the necessary
16 force. If they don't, then you don't use the necessary
17 force.

18 Q Were you part of the team that entered 3845
19 Second Avenue South in Minneapolis on January 13, 2005?

20 A Yes.

21 Q And what information were you provided regarding
22 this entry during the briefing?

23 A Be more specific, would you?

24 Q What information were you given about what you
25 were going there to do, or who were you looking for?

1 A The information that we had was -- or that I
2 received was that we were looking for a robbery suspect.

3 Q Do you recall if you received a description of
4 the individual?

5 A Other than that he was a black -- a teenage,
6 black male.

7 Q Okay. So you did know he was a teenage, black
8 male?

9 A Yeah.

10 Q When you entered the home, can you explain or
11 describe what you saw or observed?

12 A When I came up to the front door, the front door
13 was unlocked, and I opened it and announced "police
14 search warrant" loud. There were three or four women and
15 some children sitting in the living room. That's right
16 inside the front door and off to the right. Everyone's
17 hands I saw, so, I mean, they weren't -- because I think
18 they were holding kids, so nobody was ordered to the
19 floor for the fact that they had children in their hands.

20 Q Do you remember how many children were in the
21 room or in the area?

22 A No.

23 Q Do you know if there was more than one child?
24 You said children, so.

25 A Yeah, there was more than one. I would say two

1 to three.

2 Q Okay. Were the children crying?

3 A I don't recall.

4 Q Do you recall the demeanor of the children or
5 the women at all?

6 A The women seemed frightened, I mean, because we
7 startled them when we came in.

8 Q Do you recall anyone asking for the search
9 warrant or to view the search warrant?

10 A I did hear someone say that, but I couldn't tell
11 you who it was.

12 Q Do you recall if anyone responded?

13 A No.

14 Q No, no one responded, or no, you don't recall if
15 anybody responded?

16 A No, I don't recall.

17 Q Is a warrant normally shown if someone asks for
18 it?

19 A Not right away, no.

20 Q But it is shown at some point?

21 A I'm not an investigator, so that is not my role.

22 Q Okay. Did you instruct them to ask one of the
23 investigators?

24 A No.

25 Q Or did anyone instruct them to ask one of the

10

1 investigators for the warrant?

2 A I just want to clarify. I mean, I just want to
3 be sure. Are you talking about when we're actively
4 moving through this house --

5 Q Right. you said that you did --

6 A -- to do the search?

7 Q -- hear somebody ask for the warrant, and you
8 said you don't recall responding or anybody else
9 responding --

10 A No. As the team is doing -- or clearing the
11 house, they wouldn't receive a response right away until
12 the investigators came in and -- until the investigators
13 who actually have the search warrant would come in.

14 Q I understand you're saying that those are the
15 individuals who would actually show them the warrant.

16 A Right.

17 Q But I'm asking whether or not you instructed
18 them to ask the investigators when they came into the
19 home. So, for example, how are they to know that you
20 wouldn't personally or you all on the SWAT team wouldn't
21 personally have the warrant?

22 A The question wasn't directed to me, so no, I
23 don't know if someone responded or not.

24 Q Okay. All right. Do you know whether or not
25 the robbery suspect or the alleged robbery suspect was

11

1 arrested as a result of this incident?

2 A I think he was taken into custody.

3 Q But you're not sure?

4 A We retrieved two males from the -- two teenage
5 males from the second floor of the house. So I don't
6 remember if they actually had had him in custody or not,
7 no. My job is to secure the house.

8 Q Okay. With regard to others who were in the
9 household at the time of the incident, do you recall if
10 anyone else was arrested as a result of it?

11 A No, I don't recall.

12 Q Do you recall the elderly -- the more elderly,
13 or older, gentleman who was in the home at the time of
14 the incident?

15 A Yes.

16 Q Okay. And at one point, the police report, the
17 main police report indicates that he was forced to the
18 ground. Did you assist in forcing him to the ground?

19 A No.

20 Q Do you know who did?

21 A It was Sergeant Kroll.

22 Q Is that the only person?

23 A Yes.

24 Q Did you notice whether or not the gentleman
25 appeared to be ill?

12

1 A No.

2 Q No, you didn't notice?

3 A No, I didn't notice that he looked ill.

4 Q Okay. Did you notice the stint hanging out of
5 his neck?

6 A No.

7 Q Do you recall the weather on that day?

8 A Middle of January, I think, and it was cold and
9 wintery.

10 Q Right. But you don't know for sure the exact
11 weather. You just know it was probably cold since it's
12 Minnesota, and it was the middle of January?

13 A Yes.

14 Q Do you recall how long the elderly gentleman was
15 required to remain on the floor after being put on the
16 floor?

17 A As far as a timetable, no.

18 Q Okay. Do you recall the positioning of his body
19 in relationship to the front door when he was placed on
20 the ground -- or forced onto the ground? I'm sorry.

21 A Like the distance from where he was at to the
22 front door?

23 Q Right.

24 A About 15 feet.

25 Q Fifteen feet?

13

1 A I would say. I don't know what -- I mean, in
2 proximity to the front door, he was actually -- I mean,
3 he would be -- I'm trying to remember the way the house
4 is set up. The front door is here. He was probably
5 here. So about 10 to 15 feet maybe.

6 Q Okay. You said the front door is here, and he's
7 probably here. And here meaning -- is that near where
8 the stairs begin then?

9 A Yes.

10 Q Okay. So you're saying you think it's about 10
11 to 15 feet from the front door --

12 A Yes, just --

13 Q -- to the stairs?

14 A -- my guesstimation.

15 Q Okay. And you think that he was simply right
16 there at the bottom of the stairs then?

17 A Yeah. He was just to the stairs and -- he was
18 probably about here. But I don't -- yeah, just at the
19 base of the stairs and maybe to the right -- to the left
20 of the stairs if you're facing the stairway in the house.

21 Q Okay. Do you recall his wife or him asking for
22 a blanket or something to cover him up with as he lie on
23 the ground?

24 A No.

25 Q Okay. If you had heard that, would you have

14

1 attempted to assist him with that?

2 A If I would have heard that, yes.

3 Q Do you normally assist if you see someone is ill
4 or sick or elderly in this type of a situation if they
5 ask or inquire about a blanket or something to that
6 degree?

7 A Yes.

8 Q And I just want to clarify something. Earlier,
9 you said that you don't recall whether or not anybody was
10 arrested as a result of this incident. Is that correct?

11 A We had -- we -- once we secure the residence and
12 everyone is taken into custody, we leave. Whatever the
13 investigators do after that, I mean, we might find out
14 later, you know. And so I don't recall. I just --
15 there's a lot of incidents I don't know if people are
16 taken into custody.

17 Q Okay. So you just don't know?

18 A Yeah.

19 Q All right. Can you give me an idea of once you
20 walked into the home, once you entered into the home --
21 first of all, it sounded like you were saying you were
22 first because you said you opened the door and walked in.
23 Is that correct, or is that accurate?

24 A Yes.

25 Q Okay. So you were the first one to actually

15

1 walk into the home. And at that time, is that when you
2 yelled or began to say "search warrant" or "police," that
3 type of thing?

4 A As soon as the door is breached or as soon as
5 the door was opened, yes.

6 Q And were other officers saying that at the same
7 time as you, or was it just you?

8 A It was a number of us. We all say that.

9 Q Okay. Did you go to the second level to secure
10 the robbery suspect, or was that other officers who --

11 A I was on the second level. I went to the second
12 level.

13 Q Along with?

14 A Sergeant Kroll, and I don't remember who the
15 third person was.

16 Q If you enter a home, particularly on a high risk
17 entry situation, and you perceive someone or persons to
18 be a threat, what procedure do you use, or what do you
19 do?

20 A What type of threat, though? You have to be --

21 Q A harmful threat.

22 A -- more specific.

23 Q A threat of harm to you or any of your officers

24 who are with you.

25 A You will be ordered to the ground at gunpoint.

16

1 Q I'm sorry?

2 A You will be ordered to the ground at gunpoint.

3 Q Is that the only time you order people to the
4 ground at gunpoint?

5 A It is procedure to put everybody down on the
6 floor at gunpoint when entering on a high risk warrant.

7 Q Okay. I just want to clarify then, because I
8 asked you if you perceive a threat, what do you do, and
9 you said that you order them to the ground at gunpoint.
10 But then you said on a high risk warrant you put
11 everybody down. So that sounds like regardless of
12 whether you perceive a threat or not, you're putting them
13 down to the ground at gunpoint.

14 A With the exception if you have women with kids,
15 as long as you can see hands, they're not perceived as
16 threats, I mean, obviously. But as far as a true threat,
17 whichever that may be, I mean, I guess that would be a
18 person who is not showing their hands or a person with a
19 weapon in their hand, something along that line, then you
20 will be ordered to the ground, and then if you don't
21 comply with that, you'll be forced to the ground.

22 Q Okay. And at what point do you decide to cuff

23 any of the individuals who may be present at this type of
24 entry?

25 A Once we have that area secured. So once all the

17

1 threats are checked out or whatnot, then people will be
2 handcuffed.

3 Q And at that point, do you generally cuff the
4 women and children, or do you only cuff the males or
5 others who may not be holding children?

6 A It changes every time. It's a lot of
7 discretion. I have seen some women that have kids be
8 cuffed in the front and just given their child back, and
9 I've seen where teams -- where some of us, they don't
10 cuff them at all. I don't usually cuff people, so it's
11 the discretion of the person who was assigned to doing
12 that.

13 Q Okay. You said that you may or may not cuff the
14 women. I'm just trying to get an understanding. You
15 said you don't personally, but, I mean, the officer there
16 may or may not cuff the women who are holding children.
17 If they do not cuff them, is that because they may feel
18 that that person is complying with the orders that they
19 have been given?

20 MS. NELSON: Objection, calls for
21 speculation.

22 You can answer.

23 THE WITNESS: Can you repeat the question?

24 BY MS. SULLIVAN:

25 Q Sure. If the women who are present are not

18

1 cuffed -- let me back up. I'm sorry. You initially said
2 that usually you don't cuff women, or, if you don't, it's
3 because you can see their hands if they're holding
4 children. But then you said that you may cuff them or
5 other officers may cuff them and then give the child back
6 and cuff them in the front. And so I'm just trying to
7 understand that if you do not cuff them, or if they are
8 not cuffed, does that mean that they are not being
9 perceived as a threat?

10 A They're being compliant or -- yeah, they're
11 usually being compliant. So they're not perceived as a
12 threat.

13 Q Okay. Do you normally cuff children?

14 A No.

15 Q Do children usually get gun checked?

16 A Get who?

17 Q Gun checked, the gun put into their face?

18 A No.

19 Q Do you recall that happening in this incident?

20 A No.

21 Q You don't recall it happening, or it didn't

22 happen?

23 A I don't recall it happening.

24 Q So if it did happen, then that would be out of
25 the ordinary then for the procedure when doing these type

19

1 of entries?

2 A Yeah, to point a gun at a kid.

3 Q Yes.

4 A Yes.

5 Q Okay. Did you enter the lower level of the home
6 while you were on the entry?

7 A The basement?

8 Q Uh-huh.

9 A I don't recall. We usually -- procedure, we
10 usually do clear the basement. So more than likely, I
11 went down there. But I don't recall if I did or not.

12 Q Do you recall encountering -- well, strike that.
13 I'm sorry. How many males do you recall being in the
14 home?

15 A A total of four.

16 Q Okay. And earlier you indicated that two
17 younger males were upstairs when you went upstairs,
18 correct?

19 A Yes.

20 Q And you already talked about the elderly
21 gentleman who was forced to the ground. So that leaves

22 one additional male. Where did he come from?

23 A He came from the second floor with the elderly
24 male.

25 Q He came from the second floor?

20

1 A The elderly male and the other guy actually came
2 downstairs as I was coming through the kitchen.

3 Q Okay. I'm sorry. Let me just clarify. You're
4 saying the elderly male came from upstairs?

5 A Right.

6 Q I was actually asking about the fourth male.
7 Where did he come from?

8 A The fourth male was with him, and they came down
9 the stairs together.

10 Q Can you describe the fourth male?

11 A He was a larger black male. I didn't have any
12 contact with him.

13 Q Do you recall whether that male was cuffed at
14 all?

15 A I'm sure he was once we had that -- once the
16 main floor was secured, he was cuffed.

17 Q Okay. Do you recall if he was forced to the
18 ground at all?

19 A He was ordered to the ground.

20 Q So he was on the ground as well as the elderly

21 gentleman?

22 A Yes.

23 Q Okay. And he was also cuffed?

24 A Who?

25 Q The younger of the two.

21

1 A Yeah, I just stated that.

2 Q The fourth one?

3 A Yes.

4 Q Well, you said he was probably cuffed when you
5 secured the area.

6 A Yeah. I mean, once the area was secured, I'm
7 sure he was cuffed.

8 Q Do you recall any conversation going on between
9 him and any of the officers that took place while you
10 were there?

11 A I know that he -- there was conversation between
12 him and other officers. What he was saying I don't know.

13 Q Was it a loud conversation?

14 A Yes. He was very loud.

15 Q Well, I'm asking about the conversation. So
16 that also means were the officers loud?

17 A Not as loud as he would have been, no. I mean,
18 they weren't upset at him, but he was very upset.

19 Q Did you physically touch any of the individuals
20 who were in the home during the incident?

21 A No.

22 Q Did anybody?

23 A I can't attest to what other officers did, so I
24 don't know.

25 Q Okay. So you did not observe any of the

22

1 officers -- you can't say for sure whether any of them
2 physically touched any of the individuals in the home?

3 A Well, I mean, Sergeant Kroll, there was contact
4 between Sergeant Kroll and the elderly guy. And outside
5 of that, no, I don't think so.

6 Q Okay. Have you been on any other previous high
7 risk entries with Sergeant Kroll in the past?

8 A Yes, I have.

9 Q Do you have an approximate number of how many of
10 those you've done with him? Just a guess. It doesn't
11 have to be exact.

12 A No. I've been doing this for over 10 years, and
13 I've done close to a thousand of them, so, no, not an
14 exact number.

15 Q Do you know whether or not you've done like half
16 of them with him or maybe a quarter of them with him or
17 10 percent, just generally?

18 A In general, no. I honestly cannot give you a
19 general number. A general number, because I did one

20 service with him one month, a general number would
21 probably be 35 to 40.

22 Q Okay. So it depends on, it sounds like you guys
23 have different types of assignments on a monthly basis,
24 and so that you might end up working with him or some
25 other officers or sergeants doing this type of --

23

1 A Yeah. Each team rotates monthly, so a team
2 would rotate on as a primary team to do warrants, and
3 then they have a sergeant. And so it changes every 28
4 days.

5 MS. SULLIVAN: Okay. I don't have any
6 other questions.

7 MS. NELSON: I don't have any questions.
8 We'll read and sign. Thank you.

9

10 (Deposition concluded at 11:44 a.m.)

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REPORTER'S CERTIFICATE

2

3

STATE OF MINNESOTA)

) ss.

4

COUNTY OF HENNEPIN)

5

I hereby certify that I reported the deposition
of OFFICER TIMOTHY HANKS, on the 28th day of March,

2007,

6

in Minneapolis, Minnesota, and that the witness was by

me

first duly sworn to tell the whole truth;

7

That the testimony was transcribed by me and is

a

8

true record of the testimony of the witness;

9

That the cost of the original has been charged

to

the party who noticed the deposition, and that all
parties who ordered copies have been charged at the

same

rate for such copies;

11

That I am not a relative or employee or

attorney

12

or counsel of any of the parties, or a relative or
employee of such attorney or counsel;

13

That I am not financially interested in the
action and have no contract with the parties,

14

attorneys,

or persons with an interest in the action that affects

or

15 has a substantial tendency to affect my impartiality;

16 That the right to read and sign the deposition
by the witness was reserved.

17 WITNESS MY HAND AND SEAL, this 31st day of
March,
18 2007.

19

20

Lori L. Morrow, RPR, CRR
Notary Public, Hennepin County, Minnesota
21 My commission expires: January 31, 2010

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